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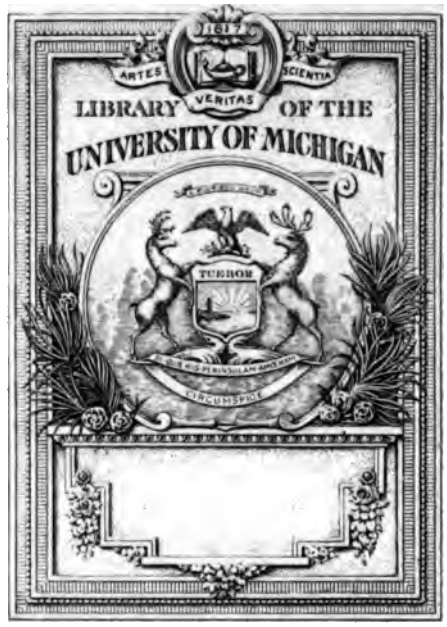
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QUINCTILIAN'S INSTITUTES

OF

ELOQUENCE:

OR,

THE ART OF SPEAKING IN PUBLIC,

IN EVERY CHARACTER AND CAPACITY.

TRANSLATED INTO ENGLISH, AFTER THE BEST LATIN EDITIONS,

WITH NOTES, CRITICAL AND EXPLANATORY,

BY W. GUTHRIE, ESQ.

Quot Officia Oratoris, tot sunt Genera dicendi. CICERO.

IN TWO VOLUMES.

VOL. I.

LONDON:

PRINTED FOR R. DUTTON, W. J. & J. RICHARDSONS, R. LEA, J. MAWMAN, VERNOR & HOOD, R. FLOWYER, J. NUNN, AND J. CAWTHORN,

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THE

PREFACE.

WITH SOME ACCOUNT OF THE

LIFE AND CHARACTER OF QUINCTILIAN.

EVER since I translated Cicero's Conferences de Oratore, I have been surprised that no complete system of English eloquence has been yet composed for the use of those who have occasion to speak in public; and, after long consideration, I could find no plan so unexceptionable, or effectual for that purpose, as a translation of Quinctilian.

Cicero's pieces upon eloquence are calculated for the use of professed orators. He is alike finished in all he advances; he preserves a wonderful propriety in his characters, and perspicuity in his precepts; he strikes us with admiration; he fills us with delight. We see the great orator in every period; and we never rise from him without secret emulation, and confest improvement, which, of all authors, he knows best to inspire and communicate.

But, in eloquence, as in other fine arts, a great composition may affect us strongly and agreeably; yet, before we can compose the like ourselves, we must study the principles,

as

as well as feel the effects of the art. We are pleased in hearing a fine piece of music, but no man can compose it without knowing the grounds of harmony, and the properties of sounds.

Were a master in painting to exhibit a finished picture, and for the information of the world, publish dissertations vindicating the disposition, the colouring and characters, of his piece; all this may give us pleasure, nay conviction, with regard to his merits; but the pupil who intends to be a painter, will not begin with studying such dissertations. He will apply to the drawing-book, to perspective, to the doctrine of lights and shadows, and a thousand other minutenesses, before he can hope to succeed in executing the like himself.

Cicero's most finished pieces upon eloquence are no other than fine dissertations upon his own performances. Quinctilian receives his future orator from the hands of the nurse. He conducts him, through every stage of education, to the head of his profession, and, from thence, to a dignified retirement from business. But he executes his great plan, from its foundation to its superstructure, with more skill and address than perhaps any writer ever discovered in any art. His precepts are so many extracts of all that is valuable in the authors who have wrote upon eloquence, digested in so clear and regular an order, that the most inexperienced scarcely need any other guide to eloquence.

But this is not the most admirable part of my author's

author's character. Of all writers that ever lived, we have reason to believe he had the truest taste of the fine arts, though he made them all subservient to that of eloquence: he saw all of them were founded but upon one principle, that of nature, and she is always in his eye: Without her, he considers all precepts as so many systems of jargon, and his professed purpose in the following work is to restore her to the empire of the human mind. But here it is necessary I should deduce the state of learning amongst the Romans to Quinctilian's times, that we, thereby, may be enabled to judge of the motives that induced him to attempt so arduous an undertaking, as that of reviving true taste among his countrymen.

The age of Cicero produced an uncommon assemblage of fine speakers. Rome, before that age, had orators, all of them distinguished in their several times and manners; but their lustre was inconsiderable, compared to that blaze of eloquence, which broke out in the days of Cicero. That great man gave eloquence the highest perfection she has received to this time; and, though, perhaps, he might have been excelled by some of his cotemporaries in certain characters, yet he never was equalled upon the whole.

His manner, however, fell into discredit, if not before his death, yet soon after. Some great authors, with Sallust at their head, struck into another style of writing. They thought that of Cicero was too diffused, too florid, and too weak, if I may use the expression,

which, though very short, has striking characters of vicious, Anti-ciceronian, composition. But after all, I can scarcely be persuaded that Mecænas was really so absurd in his taste of writing. He had great managements to observe with Augustus, who seems to have been very serious in his project of new moulding the Latin, and his minister, possibly, thought it best to give him no trouble on that head; nay, to carry his complaisance even to a pitch of ridicule.

It is no wonder if the other Romans followed those two great examples, and that the Latin language seemed ready to undergo a total alteration. Unhappily for learning, all the monsters, down to Galba, who succeeded Augustus in the Roman empire, affected the character of writers; and every man who dared to deviate from their manner exposed himself to certain destruction. This, joined to the fear which the Romans were under of speaking their minds in plain language, rendered the Latin no better than a medley of allegorical, enigmatical expressions, intermingled with strained figures and unnatural metaphors. The evil was increased by the vast swarms of needy Greeks who resorted to Rome, where they professed rhetoric, and took pains to decry Cicero. These fellows were greatly encouraged by the Romans, who at this time affected whatever was Greek: they set up a trade of teaching, and the Latin rhetoricians who were no better than their journeymen, imitated them in all their absurdities.

Perhaps, no people ever had so great a passion for eloquence as the Romans had during

the time of their republic. It was then the high road to all preferment; and when the liberties of their country were suppressed, the forms of their government still remained. These forms could not fail to put them in mind of the glorious times of their republic, wherein eloquence bore a decisive sway; when their best speakers were employed in the double duty of extending the empire, and asserting the freedom of their country. The Romans, though slaves under their emperors, still had the forum to resort to; even the senate preserved her appearances of power; their consuls still displayed all the exterior pomp of office, and not to mention the institution of many new courts of justice, the edicts of the prætor still continued to be their rules of equity.

It is no wonder, then, if the Romans, under their emperor, still retained a strong passion for eloquence. But its spirit was gone. The successors of Cæsar could not bear with the successors of Cicero. Being tyrants themselves they encouraged usurpers. His sceptre dwindled into a ferula, and his throne was cut out into so many pitiful desks, from whence the intruding professors of rhetoric railed against the lawful monarch of eloquence. Their business was not like his, to awaken the mind to sentiments of virtue and ideas of liberty; to raise, direct, and impel the great movements of the soul, to rouse the strong, and to inspire the tender passions; to fit the rules of eloquence to the arts of government, and to make the beauties of language the force of philosophy,

phy, and the fruits of experience subservient to the system of social happiness: no, the genuine charms of eloquence would have awakened mankind to virtue; her force must have impelled them to glory; and the true thunder of the forum must have shaken the pillars of tyranny.

It was the interest, therefore, of tyrants to debilitate and cripple every species of eloquence. They scarcely had any other safety. The care of words succeeded to that of things; real beauty was stifled under false ornament, and pretty thoughts filled the room of noble sentiments. Even satyr (witness Petronius, Persius, and others) concealed her mask under a vizard; for unintelligibility became a character of wit; and history only hinted at the faults she was afraid of publishing.

During such a state of the public the business of rhetoric was to teach men not how to express but how to conceal their thoughts. When some slavish compliment was made to power, the wretch who made it not being accustomed to a liberal practice of eloquence, run, at best, into a curious diction, bespangled with points, cut out into sentences, with the fetters of poetry without the freedom of sentiment. Nicknames, diminutives, abbreviations, elongations, and every species of what we may call the infantine diction, which seems to have had some encouragement from Augustus himself, was now in a manner incorporated with the Latin language. The amiable simplicity of style was considered as an infallible mark of dullness, and nature not only was abandoned but despised.

All these were consequences of that manner of teaching which Quinctilian undertook to reform. The rhetoricians, by whom I mean the schoolmasters, who taught rhetoric for fees, knew nothing either of law or philosophy; their education, like their birth, was generally mean, and they had few opportunities of knowing any but the lowest part of life. Hence it was, that never being admitted to the practice of the bar or the forum, they contrived imaginary subjects, in imitation of real causes, which they prescribed to their pupils to speak upon, *pro & contra*, as if they had been at the bar, where they were one day to practise.

This method, which is recommended by the practice of Cicero himself, is far from being either absurd or improper, when kept within due bounds: but the schoolmasters I have mentioned, instead of chusing their subjects from those common occurrences and incidents of life, that generally produce prosecutions and law-suits, formed ideal systems of government to themselves; and either invented chimerical laws, or adopted the most whimsical laws of antiquity or remote countries, for the basis of their reasonings. The oddity of the subject created an oddity of diction, which deviated from every received mode of speaking. Ideas from objects that naturally presented themselves, were discarded, to make room for those, if I may so speak, that were pressed into the service of this motly declamation, which the farther it deviated from common sense was the better received.

To

To crown the evils that arose to erudition, from such a complication of absurdities, Seneca, that paradox of learning, appeared when they were at their height. He had a bad heart and a false taste; but he disguised the one by a seeming enthusiasm for virtue, and recommended the other by an unbounded profusion of wit: his high station, his great influence, his immense riches, and extensive learning, rendered him a dictator both in philosophy and eloquence; and his mistaken ambition led him to make a most unmerciful use of his power. He was a professed enemy to Cicero, and to the practice of sustained eloquence; for he thought it not enough to be sentimental, unless he was sententious likewise. His good things, sometimes elbow themselves into his writings; his points often become troublesome by their injudicious intrusions; they are too dazzling to be pleasing, and too quick to be permanent. His composition is not like that of Cicero, and other great authors of antiquity; a composition where light and shade, strength, and gentleness, the gay, the grave, the majestic, and the lowly, though sweetly blended, and dying, as it were, into one another, have each its full effect, and are all disposed to the best advantage; his colours, indeed, are bright, but instead of being laid, they are frequently stuck upon his pieces; and though in his drawing we see an assemblage of many valuable detached figures, yet the piece is disagreeable upon the whole.

The evils which this manner introduced into writing, would easily have been remediable had they

they been confined to Seneca's own works. Posterity would then have considered him as a unique of his kind, and even at present, he is a sort of storehouse, to which our moral writers, both in prose and verse, are greatly indebted. But in his own life-time, he set up for a standard of writing; it was the fashion to conform to his manner; he would not suffer his (*) imperial pupil even to read the works of the old orators, and his authority became more pernicious than his example. Every writer, every declaimer, without one grain of wit or learning, struck into Seneca's manner, and excelled him in the greatest of his faults, though they could not copy him in the meanest of his beauties. Some, it is true, made a noble stand against this depravity of taste. The three emperors who succeeded Nero, had no leisure to influence eloquence; and Vespasian and Titus seem to have had no inclination; and thus the majority prevailing, the depravity, not only of eloquence, but of all written compositions, gained ground, and seemed to be upon the point of extinguishing true taste.

Such was the state of learning when Quinctilian laid his mighty plan for its reformation, But before I come to consider his character, and to draw the comparison between him, and my other great original, Cicero, I must introduce my reader to some acquaintance with his person and station in life; and in order to do this, I shall avoid all display of learning,

* See Suetonius in Nerone, cap. 52.

in

in which there can be no great merit, because the most valuable particulars of our information are drawn from his own works. I shall therefore, lay before my reader, a naked detail of what I learn or conjecture.

To me it is extremely probable, that more orators in Rome than one, were called Quinctilian: Some modern writers, upon the credit of St. Jerom and Ausonius, and other doubtful authorities, seem to take it for granted, that Quinctilian was a Spaniard, and born in the town Calahorra, from whence he was brought to Rome by Galba, about the year of Christ 69. But all this, I think, is either a mistake, or must be meant of some other Quinctilian than our author. My reasons are as follow: Quinctilian again and again tells us, that when he was very young, he had heard the great orator Domitius Afer plead; now, there is nothing more certain than it is from Tacitus, that this Domitius Afer died ten years before Galba came from Spain to Rome, viz. in the year of Christ 59. Mr. Dodwell, who wrote the annals of our Author, is of opinion, that he practised at the bar for some time in Spain; because, says he, he mentions several things that happened at Rome in his youth, but does not speak of any incident there for eight years after. This argument, I think, is extremely inconclusive, nor is the fact unquestionable, because he mentions, both in general and particular, a great many characters and incidents that happened at Rome, through several parts of his life, and why may we not suppose that some of them fell out in those eight years

which Mr. Dodwell cannot account for? I shall beg leave, however, to make one observation, because I think it has not been made before. When our author mentions Domitius Afer in the 7th Chapter of his Vth book, he calls himself an adolescentulus, a very young man, and speaks of the other as being a teacher of eloquence, and a man in the full practice of his business, and exercise of his reason. In the 1st chapter of his Xth book, he mentions himself, not as being an adolescentulus, but as a full judge of Afer's manner and merit at the bar. In his last chapter he speaks of the same Domitius, as having outlived his abilities, because he was *valde senex*, very old. Now, as those three periods of Afer's life must fall within the year of Christ 59, I am strongly inclined to think, that our author was born before the year of Christ 37, which is two years sooner than any writer has yet fixed his birth, excepting the Abbe Gedoyn, who makes him, at the time of Afer's death, about 22 years of age. But supposing that to be the case, he had but six years in which he could judge of Afer as an excellent teacher, an accomplished orator, and a drivelling old man; this, I think, is too short a time; and therefore, I should be inclinable to set the time of our author's birth, at least two years farther back.

Be that as it will, all probabilities are against his being a Spaniard by birth. The above observation entirely disarranges Mr. Dodwell's whole chronology of our author's life, and indeed it is not easy to conceive how so learned a man

a man could be so inaccurate as he is on this head. For, after a great profusion of learning upon the words *puer, adolescens, juvenis,* and the like, he says, " that as Domitius Afer died in the year of Christ 42, he had gained a great point, for that proves, says he, that Quinctilian could not have been born before the year of Christ 43, nor after the year 1745; for, continues he, if he had been born before the year 42, he must at least have been 17 years of age, and therefore could not have termed himself an adolescentulus, a very young man, when Afer died." But it unfortunately happens, that he is so far from calling himself an adolescentulus at that time, that he does not mention a single word of his own time of life. But the reader may consult the passage.

Before I leave this subject, however, I must take notice of another, and a still more egregious mistake of Mr. Dodwell; for he supposes that when Domitius died, our author was at his school; and that Afer was at that time a teacher of rhetoric; than all which nothing can be more contrary to our author's express words, who mentions Afer as a pleader at the bar, *cum egisset,* (a term that is never applied but to pleading at the bar, and very different from declamation) and by his doatings giving his opponents opportunities to laugh at him. Add to this, that Tacitus mentions Afer as a pleader at the bar, and the prosecutor of Claudia Pulchra. I shall not detain my reader longer upon this speculation, only I must observe that our author mentions his father, as being

being a Roman, and that if he himself was a Spaniard, it is very extraordinary, he should be so ignorant of his own tongue, as not to be certain of the meaning of the word gurdus,* though he owns it is Spanish. There is, likewise, somewhat pretty unaccountable, if Quinctilian was a native of Spain, that Martial, who undoubtedly was so, in the epigrams he addressed to him, should not claim him as his countryman. Instead of that he says,

GLORIA ROMANÆ, QUINCTILIANE, TOGÆ.

But the strongest argument for our author being a Roman by birth, may, I think, be drawn from his own writings, in which he always mentions himself as a Roman, and discovers such a knowledge of the laws and constitutions of Rome, that we can scarcely doubt of his being a native of Italy; not to mention his Latin style, in which perhaps, he never was outdone in the concise manner. The old author of his life, too, prefixed to his works, expressly says, that he was born at Rome.

Our author was an illustrious example, that great merit and great parts can ennoble any profession. Nothing could be more despicable, when he first appeared upon the stage of life, in the eyes of men of sense, than the profession of rhetoric, yet he brought it to such dignity, as to keep himself sacred even from the rage of Juvenal. That great satyrist mentions him several times, but still as if the name of Quinctilian was but another term for

* This passage is not translated, because it relates entirely to the Latin idiom.

learning and eloquence. In his sixth satyr, speaking of the inordinate affections of women, he says,

—— *Hispulla tragœdo*
Gaudet: an expectas ut Quintiliamus ametur?
" If fair Hispulla loves a player's face,
She must dislike Quinctilian's manly grace."

In the same satyr he distinguishes our author as the great standard of speaking.

Sed jacet in servi complexibus, aut equitis: dic,
Dic aliquem, sodes, dic, Quinctiliane, colorem.
" Caught in a slave's embrace—can such a wrong
Be colour'd o'er e'en by Quinctilian's tongue?"

In his seventh satyr, when he speaks of the mad extravagancy of the age, he says,

Hos inter sumptus sestertia Quinctiliano
Ut multum, duo sufficient: res nulla minoris
Constabit patri, quam filius, unde igitur tot
Quinctilianus habet saltus? Exemplo novorum
Fatorum transi Felix & pulcer & acer,
Felix, & sapiens, & nobilis, & generosus
Appositam migræ Lunam subtexit alutæ
Felix, orator quoque maximus, & jaculator:
Et si perfixit, cantat bene, distat enim, quæ
Sidera te excipiant modo primos incipientem
Edere vagitus, & adhuc a matre rubentem.
Si fortuna volet, fies de rhetore consul,
Si volet hæc eadem, fies de consule rhetor.
" Quinctilian's fee, perhaps, is eighteen-pence,
So cheap the purchase is of wit and sense.
Whence did Quinctilian then become so great?
Such fees could never raise his vast estate.
Where one succeeds, scores perish by the way.
Is great Quinctilian handsome, wise, and gay?
High in his fame, and happy in his race;
His habit if the consul's badges grace;
If quick in wit, in learning, if profound,
If ev'n his hoarseness, charms us with its sound,
Know, that the difference in his planet lies;
'Tis that which made him noble, rich, and wise:

'Tis

'Tis that which marks the future infant's fate,
And brings a rhetor to command the state:
Or should it shine with aspect more severe,
Can turn a consul's to a rhetor's chair."

Juvenal was not an author who spared what he could or durst attack. Had not the merit of Quinctilian, who I do not remember to have once mentioned him in his works, been greatly superior to his rage, he must have felt it.

Upon the whole, therefore, it seems to be certain, that our author not only enjoyed a high pitch of reputation, but had a great estate at Rome. It is true, a letter is extant in Pliny's epistles, directed to one Quinctilian, in which Pliny offers to Quinctilian a pecuniary present in order to encrease his daughter's fortune; because, adds Pliny, though your spirit is very great, your estate is but moderate. But, I think it is pretty plain that the Quinctilian here mentioned (if the name is not mistaken) must have been another Quinctilian than our author. For in the celebrated introduction to the sixth book of his Institutions, he speaks of himself as being quite childless; and, after bitterly bewailing the death of his two sons, he say, "that the fruits of his brain, as well as the acquisitions of his fortune, must go to those who are aliens to his blood." This is a way of speaking we cannot suppose he would have used, if he had had a daughter to inherit his fortune. But, besides this, I do not find reason for supposing any great intimacy to have subsisted between the younger Pliny and our author, who makes pretty free with his judgment; not to mention that Pliny had a friend

friend called Quintianus, whom he speaks of as being a man of great merit.

Ausonius, in his panegyric, tells us, that Quinctilian received the consular ornaments by means of Clemens, who was married to a near relation, if not a sister of Domitian. It is probable that the sons of this marriage were the young persons whom Domitian put under his care to be instructed in eloquence, and whom he several times mentions.

Those illustrious distinctions were uncommon to persons of Quinctilian's profession as a rhetoric-master. But he knew how to support them with a dignity and abilities that did honour to the Roman government. Though he had more knowledge, and more exactitude in his profession, than perhaps any man ever possessed, and though he inculcates the simplest, and even the most mechanical points of his art, with as much earnestness as the most important, yet no writer was ever less of a pedant. He makes an excellence in even his favourite art, to be only subservient to virtue; and he again and again declares, that the pains he takes are not to form a mere orator, but an honest statesman and a worthy patriot. In this he seems to have drawn his own picture; and in several parts of the following work, he is at no pains to conceal the satisfaction he has from the united favour of prince, nobles, and people.

As he prefers virtue to abilities, so he postpones instruction to genius. He every where declares, that, without genius, no man ought to apply to eloquence; and that, to such a man,

man, instruction is no other than plowing the sand. This is a language unknown to pedants, who think their instruction can form genius, but Quinctilian pretends only to assist it. His modesty, in this respeet, is the more extraordinary as he seems to have devoted the whole of his time and thoughts to eloquence; and mankind is but too apt to be fond to enthusiasm of what they study with intenseness. Quinctilian speaks of his art with all the ease, freedom, and politeness of a gentleman, and gives a judicious proof of the vast value he has for it, by dissuading all, who have not genius, from attempting it.

This noble frankness, this amiable disinterestedness forms a character, that is, perhaps, less eminent even in his great master Cicero. But I am not yet arrived at that part of this preface in which I intend to give some strictures of a comparison between those two unrivalled fathers of eloquence. It is sufficient to observe here, that Quinctilian had every advantage that could raise him above mercenary, little considerations. We are told his salary was paid out of the public treasury, which kept him above a mean dependance upon the parents of his pupils for subsistence. His friends, whom the reader will often find mentioned and characterised in the course of the following work, were of the highest rank and distinction as well as learning. He was not more celebrated as a professor than a pleader; we find him employed by a royal client, the fair Berenice, the same probably with whom the Emperor Titus was enamoured; and he transiently

siently mentions his success upon other occasions of great importance at the bar.

But the Consul Clemens seems to have been the great friend and patron of our author. The Emperor Domitian had two favorites of that name, and some writers (Mons. Rollin amongst the rest) are fond of supposing that our author's friend was Clemens the christian consul, and the same who is mentioned by St. Paul. It might be so; yet I see no reason why our author's memory should be so zealously attacked for his obstinacy in holding out against the christian faith, when he had so fair an opportunity of being initiated in it. For this charge says too much or too little. Why is Quinctilian more blameable in that respect than the Emperors Trajan, both the Antonini, and many other great men of that age, who do honour to the human race? Besides, it is not to be dissembled that, early as that æra of the christian religion was, some sects amongst the christians professed and practised doctrines as absurd as those of the Egyptians themselves; and we know not what prepossessions our author might have been under on that account. I have however, in the following notes, defended my author against this charge, which I think to be groundless, as well as from that of his mean adulation of the Emperor Domitian.

It is thought that the consular and patrician honours he was invested with, were conferred upon him by the Emperor Hadrian, whose rhetoric-master he was. But I think it more natural to suppose that he was indebted for them

them to Flavius Clemens in Domitian's time. He certainly finished his Institutions under Domitian, and he there speaks of himself as being in possession of great honours, as well as of high reputation; and as having retired from all business but that of instructing young gentlemen, not as a professor or master, but as a friend and patron. As to his marrying a second wife, that opinion is, I believe, groundless, and only encouraged by the beforementioned letter of Pliny. He did not begin to write his Institutes till after he had finished all his practice both as a professor and a pleader; for the charge of educating Domitian's relations was conferred upon him as a mark of distinction, and in the nature of a civil employment. We know nothing about the time of his death; but I am inclined with Mr. Dodwell, to believe, that he was alive under Hadrian, and that he did not die before the year of Christ 116.

Such is the lame account we are able to give with any colour of certainty, of our great author, nor indeed, has the course of life he chose left us much room to hope for greater information. We know not what became of his two imperial pupils, whom Domitian once designed for his successors; perhaps they were sacrificed, as their father was, to that emperor's jealousy, a few months before his death. Be that as it will, there is great probability, that Quinctilian died full of years, riches, and honours. It does not appear that he ever was actually consul; but he certainly was dignified with consular and patrician ornaments;

naments; and that he is not memorable for any share he had in the government, may be both owing to the condition of the times; and the fondness of the public for having him employed only in his favorite profession.

Besides the following work, a number of declamations have been published under our author's name; but, as in their execution, they contradict every precept laid down by him, we are therefore to believe them to be spurious, and either the work of another Quinctilian, or palmed upon the world as his. But he certainly wrote a treatise upon the causes of the corruption of eloquence which has not come to our hands.

I have, in the notes, given the reasons why the following work is so much mutilated in the original, that many passages are not intelligible. But enough remains to convince us, that it is the most elaborate, the most judicious, and the highest finished of any work antiquity has left us. There is not in the circle of the fine arts, one that our author has not improved and illustrated by his observations. There is a ground-work of good sense that runs through his whole work, and which, he shews, is applicable to every art, in the same manner, as to eloquence. He proves this to be the source of whatever we call good taste; and that it is, in fact, the organ by which nature operates. When we compare his observations upon painting and statuary with the improvements made upon both, since the revival of the arts in Europe, we are tempted to believe that he foresaw, and sought to prevent, their downfal.

He has stated the doctrine of that curvilinearity, which is so essential to gracefulness and beauty, and has elegantly shewn how it prevails in eloquence as much as in drawing. (See vol. I. p. 110, &c.) His observations upon music, poetry, natural prospects, and all kind of beauty, discover equal justice and genius. His great aim is to prove by effects, as well as precepts, that every deviation from nature is a deviation from good sense, and that without good sense, that thing which we call taste is but a glare of affectation, pride, and singularity, that decoys a weak mind into the pursuit of gross absurdities.

But Quinctilian, by his example, ennobles every precept; for his sense is no more than a comment upon his style. When he resumes, recapitulates, enforces, exhorts, and encourages, we are bewildered before we are aware in the most enchanting scenes of nature. He gives at once such delight and conviction, and his manner is so truly original, that the most ordinary things become graceful under his touch, and the most difficult pleasing by his art.

Having said thus much, I am now to make one observation, which perhaps may surprise those who are not perfectly well acquainted with the works of Cicero and Quinctilian, which is, that the latter endeavours in his style and manner to be as unlike as he can to those of Cicero, and yet, perhaps, the greatest judge dare not venture to pronounce on whose side the advantage lies.

Cicero, in his works upon eloquence, particularly his conferences upon the character of an

an orator, strikes by his air, freedom, and dignity; Quinctilian wins by his beauty, regularity, and address. Quinctilian is less splendid but more elegant, he is less commanding but more attractive; if Cicero is instructive, Quinctilian to instruction adds affability; and if he is inferior in genius to Cicero, he is equal to him in abilities, and superior in experience; I mean that experience that can be of the greatest service to a public speaker in England.

The style of Cicero is clear, diffuse, and pathetic; that of Quinctilian strong, concise, and expressive. If Cicero is more excellent in the disposition, Quinctilian is most exquisite in the execution. Cicero's abilities were undoubtedly best fitted to guide the movements of government, those of Quinctilian to determine a contest at the bar: Cicero was more decisive in debate, but Quinctilian more useful in pleading; the former could raise a spirit, but the latter could direct it.

Quinctilian never was excelled in majesty but by Cicero, and Cicero never equalled in gracefulness but by Quinctilian. We are ashamed to differ with the one, we cannot resist the other. Both know how to rise with temper and to fall with dignity. Though both had great natural, yet Quinctilian had more accidental, advantages; but though Quinctilian's work is more useful to an Englishman, yet, had he lived in the days of the Roman republic, the pre-eminence would have been clearly on Cicero's side.

Quinctilian had vast advantages that Cicero had not. He had the acquisitions of a hundred years

years after Cicero's death, to improve his knowledge; he had leisure, fortune, and public favour, upon his side; and Cicero was often without them all. Quinctilian's days were enriched by the works of a Virgil, a Horace, a Livy, and much greater writers than Cicero had ever seen in the Latin language. The Romans, when Quinctilian lived, had acquired a much finer taste in painting than they, in general, had in the days of Cicero; and Quinctilian had much greater opportunities than Cicero ever had to study (that I may use Cicero's own words in his pleading for Archias) that intellectual relation, that secret charm in the liberal professions, which, connecting one to the other, combines them all.

Here Quinctilian excels, not only all writers who have lived before him, but all who have appeared since. From poetry he furnishes his orator with ornament, and from drawing with gracefulness. He brings every elegance of life to his assistance; he directs him how to take advantage of the swelling note and the flowing robe; while the varied landskip, the fruitful as well as the flowery field; the purling as well as the rapid stream, become subservient to his purpose; and he finds characters of true and false beauty, in almost every work of art or nature.

But is this all-accomplished master faultless? Has he no weak side upon which he may be attacked? I do not pretend that he is faultless, but his faults are the faults of care, of concern, and of anxiety, lest his pupil should not be furnished with a superabundancy of whatever

whatever can contribute to his improvement. But, even in this respect, we must be sparing of our censure. It required a much greater compass of learning and accomplishments to form a Roman orator than an English pleader; and the Latin Language is far more critically severe than the English. We are not, therefore, hastily to pronounce, that he fell into that fault which he blames in others. He might find that necessary which we think superfluous; and even, at this day, were a modern professor to undertake to form what Cicero was, and Quinctilian wished for, I mean an accomplished orator, he might, perhaps, require all the minutenesses which Quinctilian recommends, and find them all too few for his purpose. Who can venture to pronounce, that a want of attention to those minutenesses is not the chief reason, why we never yet have seen an orator that can rival Cicero, or a critic that can equal Quinctilian?

When I mention Quinctilian as the greatest critic ever wrote, the reader will, perhaps, be surprised when I say, that I think he has sometimes inaccuracies in his style, which he himself would not have indulged in a pupil. I should bring down his own indignation upon me, did I pretend to apologise for this neglect, by saying, that a great master is not bound over to the mechanical niceties of language; for he tells us again and again, there is no consideration of language that ought not to claim an orator's attention. A much better apology may be offered, from the miserable state in which his writings were found, about the time learning

ing began to revive in Europe, Poggius, an eminent Italian author, discovered the manuscript of the original I now offer to the public, lying, like learning itself, oppressed with loads of monkish ignorance, at the bottom of a tower in the Abby of St. Gall, and by an honest fraud he procured it to be transcribed, and in the year 1468, it was printed at Rome; several manuscripts were afterwards produced, and many editions printed, but all of them, either from the manuscript of Poggius, or if possible more mutilated and depraved. And thus our author is *laniatus corpore toto*.--- The reason is plain. After Quinctilian's death, every ignorant professor of rhetoric, read such parts of our author's Institutes, and altered them, as best suited his fancy; and they were transcribed by his scholars, as Quinctilian tells us they were in his own life-time, with haste and accuracy, till the true readings, in thousands of places, became quite irrecoverable. Add to this, that during the dark ages, the eloquence recommended by Quinctilian was so far from being in vogue, that it could find no admission either into schools, courts, or senates.

The above considerations ought partly, though I will not say, wholly, to acquit our author from the charge of certain incorrectnesses that are too palpable in his style. Every manuscript and every edition of him varies from another. So that it is fairly to be presumed, his faults, in this respect, are to be less imputed to him, than to his transcribers and editors; especially, if we consider how wonderfully accurate

rate and exact he is, in all the passages that are indisputedly as they came from his pen.

I must not, however, dissemble that his extreme attachment to conciseness, and his vast success in that happiness of diction, which, perhaps, is peculiar to himself, might greatly contribute to the difficulty of recovering his original text. When a style, like that of Cicero's orations, is diffused and flowing, there is great room for conjecture in matters of obscurity, and we have often seen sagacity do wonders in such cases. But this is next to impracticable, when words and phrases are so happily chosen, that the same identical expressions must be restored, otherwise we cannot make sense of the period.

I shall add but one general observation with regard to my author. He is at present a great name in learning; but his highest merits are generally the least understood. He is little considered in any other light, than that of a judicious, experienced, teacher of rhetoric. Many of his precepts therefore have been quoted by eminent writers. But they are quoted as precepts only. We do not, in them, see the great genius, though we may the able critic; we are unacquainted with the man of virtue, though we discern the profound scholar; we see how he can dictate, but we know not how he can execute; and while we attend the able professor, we lose sight of the fine gentleman, the great writer, the polite friend, and the candid judge of men, arts, and manners.

I should ill discharge what may be expected

of

of me in this preface, did I not say, that our author is more obliged to the Abbé Gedoyn, his French translator, than to the whole herd of his commentators and editors. He is generally equal to his meaning, though seldom to his spirit, and never to his eloquence. But the French language is chiefly in fault. There can be no conciseness without copiousness, and the genius of a language is like the season of the year, for the more plentiful its crops are, the stronger, the more nutritive, and the more exalted are its fruits.

Burman, a Dutch professor, has published an edition of our author, overloaded with notes, which prove, that he had not the merit even of an accomplished pedant. Unsagacious in his conjectures, and unhappy in his amendments when our author's meaning is clear. Burman generally is diffusive: when difficult doubtful, and when desperate silent. Monsieur Rollin has manifestly adapted our author to the purposes of sacred oratory; but though he has curtailed I think too great a part of him, yet he treats him with great respect, and has very judiciously thrown in some notes of his own, and some from Adrian Turnebus, that are more instructive than all Burman's dull commentaries. Many other learned men have laboured upon our author, but some of them with no great success; and it would be tedious, were I to particularize the others, who are now and then happy in their conjectures.

I now beg leave to add something with regard to my own performance. When I had translated (as I hinted in the beginning of this

preface) Cicero's Conferences upon the Character and Qualifications of an Orator, I was extremely sensible that they could not be adapted to every species of public speaking in England. But Quinctilian can. He is equally fitted for the senate, the pulpit, the bar, public assemblies, and private debates. Even the player as well as the orator, will here find every thing that can give justness to his elocution, and gracefulness to his action. His precepts are not confined, as Cicero's are, to a single climate or profession, but are founded upon universal principles, that must have their effects in all ages, and in all languages. They are as well calculated for Westminster-hall as for the Roman forum; and are as improving in common conversation as in public speaking.

Such were my motives for attempting and executing this difficult undertaking. As to farther particulars that regard my translation, I refer my reader to the notes, where he will find my reason for some liberties I have taken, and many passages which I have translated differently from the sense in which they have hitherto been received.

W. GUTHRIE.

Nov. 1, 1755.

QUINCTILIAN'S INSTITUTES

OF

ELOQUENCE.

INTRODUCTION,

CONTAINING A GENERAL PLAN OF THE WORK.

TO MARCELLUS VICTOR.

AFTER obtaining respite from the application, which, for twenty years, I had bestowed in educating young gentlemen, I own, that, for a long time, I declined to comply with the demand, which certain friends made upon me, that I should draw up somewhat concerning the art of public speaking; because I well knew, that many authors, of the greatest eminence in both languages,* had transmitted to posterity most accurate compositions upon this subject. But the very reason which I urged, in order to be excused the more readily, made them the more eager in insisting: "Because," said they, "amidst the various and sometimes contradictory opinions of former authors, it is difficult to make a right choice." So that it was no unreasonable request, if I did not strike out a new system of my own, that I should take the trouble to lay down some rules for judging upon former ones. But though I was not prevailed

* Viz. Greek and Latin.

upon by any confidence I had of succeeding in what was required of me, so much as by my not having assurance enough to reject the request, yet the subject grew so upon my hands, that I voluntarily undertook a more difficult task than they imposed; and that not only with a view of deserving well of my friends by paying them the most explicit obedience, but of declining the hackneyed paths, which others had trod before me. For the writers, in general, upon this subject, set out with giving the finishing strokes of eloquence to those whom they suppose to be complete masters in every other kind of learning: either through contempt of our infant studies, or from a notion that they did not properly fall under their province, as the two professions are quite different. Or, which is more probable, because they thought that a man of genius never would value himself upon studies which, however necessary, are far from being conspicuous; for while the superstructure is admired, the foundation is concealed. For my part, as I think there is nothing foreign to the art of speaking well that must be acknowledged to be indispensably necessary to an orator, and as we cannot arrive at the summit of any thing without going through the preceding parts, I shall not disdain to stoop to those lesser circumstances that are absolutely necessary to the attainment of higher perfection; and I shall set out in the very same manner as if I were to begin to form, from his infancy, the studies of an orator who is delivered over to me for education.

This, Marcellus Victor, is the work that I address to you: you are the dearest of my friends; and you are passionately fond of letters: but though these are strong, yet are they not my sole, motives; for I think that a treatise on this subject will be no disservice to the education of your son, whose dawn of life evidently

evidently promises to arrive at the meridian of genius. A treatise, which I resolved to carry from the very infancy, as I may say, of eloquence, through all the arts, so far as they may be of service to the future orator, till he reaches the summit of his profession. I am the more induced to pursue this plan, because two books upon the Art of Rhetoric have appeared under my name, though I neither published them, nor were they composed with that view. For the boys, for whose use the one was intended, got it by heart, after I had delivered it for two days: the other, through an over hasty compliment to the supposed author, was published from a mistaken partiality in my favour, by certain young gentlemen of merit, according to the notes, which they had, to the best of their abilities, taken of it for several days. In the following treatise you will find some things the same, many altered, and more added, but all better digested, and finished to the utmost of my ability.

Now, according to my definition, no man can be a complete orator unless he is a good man: I therefore require, that he should be not only all-accomplished in eloquence, but possessed of every moral virtue. For I cannot be of opinion, with some people, that we are to be delivered over to philosophers in order to be instructed as to all that regards uprightness and honesty in life; because, I think, that a man who understands the social duties, and how to manage both public and private concerns; to govern cities by wisdom, to regulate them by laws, and to improve them by institutions; is, in fact, nothing but an orator. Therefore, though I own, that I shall make use of some maxims laid down in the works of philosophers; yet it is with great right and authority I contend, that properly they relate to my subject, and belong to the art of

of eloquence. If we very often have occasion to treat of justice, fortitude, temperance, and the like virtues (for some matter arises from them in almost every subject that occurs), are we to doubt that an orator makes the principal figure, wherever the force of genius and the force of eloquence is required? These accomplishments (as Cicero has evidently proved), as they are linked together by man's nature, are connected by his duty; and the wise were looked upon as the same with the eloquent. This accomplishment split in process of time, and it happened that indolence adopted the difference. For when the tongue came to be hired out, and the practice of eloquence perverted the use of the best things, then they who were orators by profession, abandoned the study of virtue; which thereby became the province of meaner capacities. Afterwards, some, despising the traffic of eloquence, returned to form the morals, and to regulate the lives of mankind; and thereby adopted the better part; if the study admits of a division. They, however, assumed to themselves a most insolent appellation, for they affected to be called sole professors of wisdom: an appellation which neither the greatest princes, the most consummate politicians, nor the ablest statesmen ever presumed to appropriate to themselves: because such always chose to display their excellencies by their actions, rather than their professions. I readily admit, that many of the old professors of wisdom taught the study of virtue, and practised what they taught; but in our days the persons who went under* that appellation were generally men of the most

* That appellation] This passage seems to be intended as a compliment to the Emperor Domitian and the Roman Senate, under whom our author lived, and who about this time expelled all the philosophers from Rome.

abandoned

abandoned principles. For they did not by virtue and study aim at the character of philosophers, but they cloaked the vilest immoralities under grimace of countenance, a sourness of behaviour, and a singularity of dress. But we now indiscriminately handle those subjects, which those philosophers had appropriated to themselves. For where, at present, is the man, be he ever so vitious, who does not talk of justice, equity, and virtue? Where can you find a clown, who does not enter into disquisitions concerning natural causes? For eloquence and propriety of words ought to be the common concern of all who pretend to the purity of speech. But the orator knows all those matters, and can express them to the greatest advantage; and where an orator happens to be accomplished, there is no occasion to apply for moral precepts to the schools of philosophers. At present, we are under a necessity of sometimes having recourse to those authors who seized upon the abandoned, but the preferable part of the oratorial art, and to claim it as our own property; not that we are to make use of what they have invented, but that we may make them sensible they have usurped a profession which belonged to others.

Let an orator be such a man as we may term truly wise; not only accomplished in his manners (for I am of a different opinion from those who think that that is sufficient) but in knowledge, and the practice of speaking, beyond what perhaps any man ever was. But this is no reason why we should relax in aiming at perfection. It was the practice with most of the * ancients to lay down maxims of wisdom, though they did not admit that any man was perfectly wise. For there is certainly such a thing as perfection in eloquence, and there is no-

* Ancients] This is to be understood chiefly of the Stoics.

thing

thing in human nature, that forbids our attaining it. But even though it should not be attained, yet still they who aspire to the summit, will go higher than they who, preposterously despairing of succeeding in their aim, loiter about the bottom.

It is therefore the more pardonable in me, if I do not omit considerations which, however minute in themselves, yet are indispensable in the work I propose. My first book shall treat of matters which precede the profession of eloquence; the second will contain the first elements of rhetoric, and all the requisites of that art. The five following are appropriated to invention, and to that is added method; and the four next treat of elocution, under which head is comprised memory and pronunciation. One book is added, upon the character of an orator, in which, to the best of my poor abilities, I shall treat of his morals, of his practice, and undertaking, studying and managing causes; upon the nature of eloquence, upon the purposes of pleading, and concerning his studies after these are accomplished.

With all those points I shall intermix, as occasion offers, the practice of speaking, for the instruction not only of those who study the principles to which some have appropriated the name of this art, and who study rhetoric as they study law, but likewise for the improving and increasing the powers of eloquence. For dry treatises generally break down and mince whatever is noble in eloquence, by an over-affectation of delicacy, and, thereby draining it of all its generous spirit, bare it to the very bones, which ought to be cloathed with flesh and blood, as well as knit and compacted with nerves and sinews. Therefore I have not (as is generally done) comprised in those twelve books the dry precepts alone of this art, but I have compendiously pointed out

out every thing that I conceived to be of service in the education of a public speaker; for had I enlarged, as much as I could, upon every point, there would have been no end of my work.

One thing, however, I must premise; that, without the assistance of natural capacity, rules and precepts are of no efficacy. Therefore, this treatise is no more intended for those who are defective in point of genius, than a treatise upon the improvement of lands is applicable to barren grounds. Besides, nature throws in other aids, voice, the strength of lungs, health, resolution, comeliness; all which are improveable by art, if nature contributes to them but a little: though they are sometimes so defective, that they spoil even what is valuable in genius, and in application. Nay, this work will of itself be of very little service without a skilful tutor, obstinate application, with great and continual practice in writing, reading, and speaking.

QUINCTILIAN'S INSTITUTES

OF

ELOQUENCE.

BOOK I.

CHAP. I.

CONCERNING THE EDUCATION OF THE FUTURE ORATOR.

That Nature generally is not so much wanting as Care.—Of the Qualities required in Nurses, Parents, Play-fellows, and Tutors.—That a Boy ought to begin with the Study of Greek.—That he is capable of Improvement before he is Seven Years of Age; but that he ought not to be over-studied at that Age.—Our Author's Apology for treating of such minute Subjects.—Concerning Reading and Writing.

A FATHER, the moment he becomes so, ought to entertain the greatest hopes of his son; he will therefore the more early watch over his improvement. For it is a mistaken complaint, that very few people are naturally endowed with quick apprehension; and that most persons lose the fruits of all their application and study, through a natural defect of understanding. The case is the very reverse, because we find mankind in general to be quick in apprehension, and susceptible of instruction. This is the characteristic of the human race; and as birds are provided by nature with a propensity to fly, horses to run, and wild beasts to be savage; so the working and the sagacity of the brain is peculiar to man;

man; and hence it is, that his mind is supposed to be of divine original. Now, the dull and the indocile are in no other sense the productions of nature, than are monstrous shapes, and extraordinary objects, which are very rare. To prove this, we have known many boys, who had the most promising appearances, all which vanished as they grew up: a plain evidence it was not their nature, but care, that was deficient. I readily admit, that the capacity of one man may be better than that of another; some make great, others less, proficiency; but, we never knew a man whom study did not somewhat improve. Whoever is sensible of this, as soon as he becomes a father, ought to employ the most diligent attention to the education of the future orator.

First of all, nurses ought to be free from all impediment, and impropriety, of speech. Chrysippus wished every nurse to be a woman of sense; but in all events he was of opinion the best that could be had should be pitched upon, according to the circumstances of the parties. It is true, their morals ought to be the first consideration, but it is requisite that they should speak with propriety. Their speech is the first the child hears, and he lisps out an imitation of their words. By nature, we are very tenacious of what we imbibe in the dawn of life, in the same manner as new vessels retain the flavour, which they first drink in. There is no recovering wool to its native whiteness after it is dyed. Now, the more vitious a habit is, the closer it will stick; for good habits are easily changed into bad ones: but where did you ever know a vitious habit become a good one? Even a child, therefore, ought to be used to nothing in his infancy, which he must afterwards be at pains to unlearn.

As to parents, I would, by all means, have them persons of learning. I do not speak this of fathers only,

only, for we are told that the eloquence of the Gracchi was greatly improved by their mother Cornelia, the purity of whose style has been handed down to posterity in her letters. The daughter of Lælius is said to have resembled her father in eloquence; and the daughter of Quintus Hortensius pronounced, before the Triumvers, a speech, which would do honour to the eloquent of our sex. Even they who are themselves unlearned, ought not to relax in their attention to their children's learning; nay, they ought, for that very reason, to bestow the more pains in all other respects. As to play-fellows, and the companions of young gentlemen, I recommend the same thing, as I do concerning nurses.

With regard to tutors, I recommend, if possible, that they may be men of real learning, or, that they be sensible they have no learning at all. For nothing is more nauseous, than men who, having got just a smattering in advanced learning, vainly persuade themselves that they are men of knowledge. Because such men disdain to submit to those who really have learning, and being swelled, as such fellows are apt to be, with a conceit of their own power, they give out their lessons of ignorance not only in an imperious, but a brutal, manner. We are told by Diogenes of Babylon, that Leonidas, the Tutor of Alexander, infected his young pupil with some blemishes which stuck to him after he grew up and became a great king.

If any one should think me exorbitant in what I require, let him consider that I propose to educate an orator; an arduous task! For, supposing that nature has fully done her part, yet great and many are the difficulties still to be surmounted. For the pupil will require close application, excellent masters, and variety of exercises. The rules I lay down, therefore, must be the best in every kind: and if there

there is then any defect, the fault will lie, not in the method, but in the persons.

Meanwhile, if it should happen that such nurses, companions, and tutors, as I have recommended are not to be had, yet some one who has some knowledge of language ought to be always about the young gentleman. This person is instantly to set him right, when others make use of any impropriety of expression in his hearing; and thereby take care that it does not grow up into a habit. It is, however, still to be understood, that what I have recommended before is most eligible, and this method is only to be followed instead of a better.

I chuse that a boy should begin with the study of the Greek language, because the Latin is so common that we are obliged to learn it: at the same time it is proper that his education should begin with Greek studies, because, from thence our own learning is derived. And yet I am not for his applying so scrupulously to Greek, as for a long time to speak no other tongue, and have no other study, as is generally the case; because such a practice gives rise to great faults in our own pronunciation and language, both which are thereby vitiated with a foreign cast; for when we contract a confirmed habit of speaking in the Greek idiom, it is almost irremoveable, and gives a wrong turn to our speaking of Latin. The study of the Latin language therefore ought soon to follow that of the Greek, and in a short time they ought to keep pace together; and then, by giving to both an equal degree of attention, neither will hurt the other.

Some have been of opinion that a boy's education ought not to commence till he is seven years of age; because till then the mind is neither capable of instruction, nor able to endure the toil. We are told that Hesiod was of that opinion, by a great many who

who lived before Aristophanes the grammarian, the first who denied the book* of rules where that passage is found, to belong to Hesiod. But other authors, particularly Eratosthenes, were of the same opinion. They however, who, with Crysippus, think that every moment of time ought to be employed, are more defensible in their opinion: for though he allowed the child to be for three years in the nurse's hands, yet he thought that at that age the mind is susceptible of excellent instruction, even from women. For why should we imagine the mind to be incapable of letters, and yet capable of manners? At the same time, I am sensible, that during all the time I speak of, the child can scarcely make such proficiency, as he will make for one year afterwards. And yet I think that they, who are most of that opinion, seem, in this respect, to be more tender of the tutor than of the pupil. How can the time be better employed from the moment the child begins to talk? For it is certain that he must be employed in somewhat. Or why are we to despise the purchase, be it ever so little, that is to be made before the seventh year? And, indeed, inconsiderable as the progress is, that a child can make at that age, yet still he will be capable of greater improvements, because during the preceding time he has improved a little. This improvement, continued for years, becomes considerable in the whole; and every hour saved in infancy is so much acquired to youth. The same rule ought to be observed as to the following years, that, when a boy has a thing to learn, he may not be too late in beginning to study it. Let us not, therefore, lose even the most early hours of life, and the rather, because the rudiments of knowledge are acquired by memory only, which we possess in our earliest days, nay, it is then very tenacious.

* Book of Rules. Orig. Τευχους.

I am

I am not, however, so disregardful of that time of life, as to enjoin it to be treated with downright severity, or require from it a full task. For we ought to be extremely careful, that a boy does not conceive an aversion for learning before he can have a love for it, and that he does not preserve, in advanced life, a dislike for what once gave him pain. Let his study be made his diversion; let him be soothed and caressed into it; and let him sometimes value himself upon his proficiency. Sometimes mortify him by instructing some other boy whom he is jealous of; then let them challenge, and give your pupil leave to imagine that he generally comes off conqueror: let him even be encouraged by giving him the rewards that are most taking with that age.

These are minute considerations, as I undertake the education of an orator. But we are to consider that even studies have their infancy; and as men even of the most robust constitutions have in their infancy been fed with milk and rocked in a cradle; so there was a time when the voice of the most eloquent orator was an inarticulate sound; when it indistinctly lisped out his meaning, and when he was puzzled even about the letters of the alphabet. Neither are we to imagine, that because a thing is too hard to be studied, it is therefore unnecessary. Now if nobody takes it amiss, when a father thinks that those particulars are not to be neglected in the education of his son; why is a man to be blamed for publishing to the world what he conceives to be proper for a domestic education? And the rather, because easy instruction is best suited to young minds; and as there are certain movements of the limbs to which our bodies can only be formed when they are tender, so even strength itself renders our minds less susceptible of most studies. Would Philip

King

King of Macedon have ordered his son Alexander to have been instructed in the first rudiments of learning by Aristotle, the greatest philosopher of that age, or would Aristotle have undertaken that office, unless he had believed it to be highly necessary for the mind to receive its earliest instruction from the most accomplished master? Supposing therefore that an Alexander is to receive the milk of his learning from me, shall I be ashamed to instruct a pupil of so much consequence (and every man's son ought to be of the same consequence to him), even in the most compendious methods of learning, while I am teaching him the first rudiments of letters?

And indeed, for my own part, I am dissatisfied with the general method of instruction, by making young children learn the names and relations of letters before they have learned the shapes of them. This practice prevents their understanding them, because, they do not apply their mind to study the forms of the letters, while they repeat them by rote from their memory. This is a good reason why teachers, even after children are thoroughly instructed in the letters, as they usually follow one another, should disorder and change them, and alter their places, till such time as the scholars should know them by their shape, and not by their order of standing. They will then know letters as we know men, both by their appearance and their names. But that practice which is inconvenient in learning of their letters, will not be so with regard to syllables.

Meanwhile I am far from excluding the common method of entering children into learning by giving them the forms of the characters, cut out in ivory, to play with; nor any other invention that can be thought of more taking with that time of life; nor any thing they can take a pleasure in handling, or looking at, or expressing.

But

But when the child now begins to trace the forms of letters, it is proper to have them very elegantly carved out upon a board, in order that he may run his pen over them as through so many grooves. For the extremities of the board being guarded with ledges will not suffer him, as upon a smooth surface, to write irregular or out of compass, and the more frequently and quickly he follows fixed delineations, the sooner he will form his hand; without standing in need of another person's hand to direct his in shaping the letters. Men of quality are in the wrong to undervalue, as they often do, the practice of a fair and quick hand in writing; for it is no immaterial accomplishment. As, therefore, an elegant hand of writing is a main requisite of study, it becomes a real accomplishment, and, as it should be deeply rooted, let it be acquired at the most early time of life: when it is slow, it stops the quickness of thought; when rude and confused, it is void of meaning; and those inconveniences beget another trouble in order to remedy them, I mean, that of inditing. Therefore, as it will at all times and upon all occasions, especially in our private and intimate correspondences, give us pleasure, let this accomplishment be, by no means, neglected.

There is no epitomising the study of syllables; all of them ought to be expressed, without, as often is the case, putting off the most difficult, which makes youths at a loss in every thing they write. We ought by no means to be over hasty in trusting to a young memory; it is more improving to repeat a thing, and inculcate it on the understanding: and in reading we are not to hurry on without stay or stop; unless when an intire and clear connexion of letters can be supplied without, at least, any interruption from being obliged to recollect. Let the pupil then begin to form syllables into words, and words into

periods. The prejudice that hurry does to reading is inconceivable. It gives rise to doubts, stammering, and repetitions, in those who attempt more than they can compass; and when they once are out, they are diffident even of the things they are masters of. Let the pupil therefore begin with reading syllables, then let him join them into words and sentences, but let him be all the while slow and sure, until, by practice, he arrives at a correct quickness. For the general method that always is recommended, that of catching, with the eye, what goes before in the same line, so as to provide the proper pronunciation, is not to be acquired by rules only, but by practice; because the reader must pronounce the foregoing part while he is eyeing what follows, and the purpose of his mind must be divided by employing his voice one way, and his eyes another, which is a matter of the greatest difficulty.

When a boy, that I may pursue this minute detail, begins, as is the general custom, to write down the names of things, it is proper to guard him against losing his labour upon common and ordinary words. For it is possible for him while he is on another pursuit, to learn the meaning of phrases and technical terms, which the Greeks call γλῶτται, and even in his earliest studies to gain a piece of knowledge, for which part of his time, if he does not before acquire it, must be afterwards set apart. And as hitherto we have dwelt upon trifling matters, even the copies set him for the improvement of his hand-writing ought not to be an unmeaning set of words, but to convey some beautiful sentiment; the remembrance of which will stick to him, when he is old; and when stampt upon his tender mind, the impression will even improve his morals. There is likewise room, even while he is following his diversions, for instructing him in the sayings of illustrious

ous persons, and teaching him some beautiful passages, especially from the poets, who are generally favourites with young persons. Now, as I shall prove in its proper place, memory being an indispensable property in an orator, it is chiefly strengthened and nourished by practice; and the age, of which I am now treating, being incapable of striking out any thing of itself, it is almost the only faculty that can then be improved by the care of the teachers. When a young gentleman is come to the age in which his pronunciation is more full, and his articulation more distinct, it will not be amiss for him to repeat over with rapidity certain words and lines of a studied harshness, and chained together by grating sounds and jarring syllables, so as to make one roughness of the whole. Such lines were by the Greeks termed κακοζηλα. This appears to be an inconsiderable injunction, but when it is omitted, a great many faults of expression become afterwards incurable by habit, because they are not rooted out in the early time of life.

CHAP. II.

AN INQUIRY WHETHER A DOMESTIC, OR A PUBLIC EDUCATION IS MOST PROPER FOR A YOUNG GENTLEMAN.

A Refutation of the Objections urged against a public Education and Schools.—That it is not detrimental to Morals.—A severe Invective against the ruinous Fondness of some Parents for their Children.—That Public Schools are far from hindering a Boy's Improvement.—And recommended on many Accounts.

But the young gentleman begins now to grow upon my hands, to leave his go-cart, and to think in earnest about learning. I shall therefore employ this chapter chiefly upon the discussion of the following

lowing question, viz. Whether the confining his studies to his own home, and within the walls of a private house, or entering him into a large school, and putting him, as it were, under the care of a public master, is most conducive to the young gentleman's advantage? The latter method, I perceive, has been followed by those who have regulated the polity of the most illustrious states, as well as by the most eminent authors.

We are not however to dissemble, that the private opinions of some dissent from this, almost general practice of public education; and that chiefly through two reasons. The first is, that the morals of a youth are more safe by his being retired from a crowd of boys, all of them of an age prone to vice; and I wish that there was no foundation for the immoralities that are often charged upon that time of life. Their other reason is, that a master, be he who he will, has more time to bestow upon one boy than he can have when he is to instruct numbers.

As to the first reason, it is a matter of great weight. For were I clear that the public schools, while they advance studies, hurt morals, I should prefer the practice of morality even to the endowments of eloquence. But, in my opinion, they are one and the same thing, and cannot be separated. For I account no one to be an orator, if he is not an honest man; and I should not wish him to be otherwise, were it even possible. Let me therefore canvass this matter first.

Boys, say they, have their morals debauched at public schools. I grant this sometimes to be the case; but they are debauched at home likewise: and I am thoroughly persuaded, that many instances may be brought to prove, that, in either education, the morals have been both debauched and inviolably preserved. The whole difference lies in nature, and

in the care bestowed upon a pupil. Supposing a youth to have a natural propensity to vice; supposing no care to have been taken in forming and in cultivating his morals in the most early time of his life; supposing this, I say, he will find opportunities for practising vice, even in solitude itself. It is possible for his private tutor to be a profligate fellow; and he is as liable to be debauched by keeping company with wicked slaves, as with graceless young gentlemen.

Supposing, on the other hand, his natural disposition to be virtuous; supposing his parents not to be quite slothful, stupid and indifferent about his education; no more is to be done than to chuse for his master, a man of the most irreproachable morals (a matter that is always chief in a sensible parent's thoughts), and then put him upon a regular course of education; without forgetting to place about his person some worthy, discreet friend, or faithful freedman, who, by constantly keeping him company, will over-awe and reform all his companions, who are suspected of lewdness. This apprehension, therefore, is easily guarded against.

Would to Heaven, that we ourselves were not the chief instruments in corrupting the morals of our children! No sooner are they born, than we enervate them by fondness; for that delicacy of education, which we term indulgence, breaks down every power both of body and mind. When the child stammers about in costly robes, what will not the man aspire to? The first words he learns to lisp are his purple, or his crimson cloak; and we pay more attention to his palate than to his pronunciation. Before they leave their go-carts, they grow up to be lads; and never do they put a foot to the ground, but when they are swung and suspended in leading strings by their attendants.

When

When they say any thing immodest, we feel sensible pleasure. We kiss and fondle them for expressions that would put even an effeminate Ægyptian out of countenance; and where is the mighty wonder in their being such early proficients in luxury; for all they learn and all they hear is from ourselves? They are witnesses of our lewdest, our most infamous, amours; our dining-rooms ring with obscene songs; and all our entertainments are mixed with indecent objects. This, at first, becomes habit, and habit grows into nature. The poor infants learn those things before they know them to be vices; and thus melting into luxury, and dissolved in effeminacy, they carry into schools their lewdness, instead of catching it there.

But, it may be said, when one man has the charge only of one child, he will have the more time to bestow on his education. In the first place, I know nothing to hinder a young gentleman who is educated at a public school from having a private master. But supposing that both cannot be united, yet I prefer to gloom and solitude, that free and open air, which reigns in the assembly of noble, generous youths. For the more excellent a master is, the more he is pleased with having a numerous auditory; and the better he thinks himself entitled to a crowded house. Meanwhile, masters, who are conscious of poor abilities in themselves, love to fasten upon a single pupil, and will even stoop to all the drudgery of a domestic tutor. But admitting, that through favour, friendship, or money, a parent may procure a man of the greatest learning and virtue to teach his son at home; will such a man spend the whole day in instructing him? If he does, is not the mind, by too intense application to study, as apt to be fatigued as the eye is by being too long fixed upon the one object? Especially when

when we consider, that the young gentleman is to do a great deal by himself. For the master is not to assist him in getting by heart, in writing and in digesting what he is learning; and the company of any person, be who he will, is an interruption to him while he is about those exercises. Besides, every author does not require to be prelected or explained. If that were the case, how could a young gentleman make himself master of such variety of reading? The work there, for a whole day, may be planned out in a very small compass of time; and the lessons, which a master gives out to a few, may reach to many, because they are generally delivered in such a manner, that he can convey them to all his hearers with the same breath. I shall here say nothing concerning the divisions and declamations of the rhetoricians; for it is certain, that let the audience be ever so numerous, yet every one can carry off the whole. For a master's voice is not like an entertainment, where the more numerous the guests are, the more the fare diminishes; but like the sun, which diffuses to all alike, the same degree of light and heat. Thus, when a grammarian prelects upon the art of speaking, if he solves difficulties, if he explains histories, or poems, every one who hears him may profit alike.

But (it may be further urged), the great number of scholars prevents a master from instructing and inspecting them as he ought. Every thing has its inconveniences; and I shall admit this to be one; but let me, in the mean time, set the advantage against the disadvantage. I am not for sending a boy to a school where he may be neglected. But we cannot suppose, that an able master will encumber himself with a greater crowd of scholars than he can manage; and our first care ought to be to render him, by all means, our intimate friend; so that the pains he

he takes may not be a matter of business, but of affection; and thereby he never shall get into a crowd. A master, let him have but a moderate tincture of learning, will, for his own credit, cherish application and genius wherever he finds them. But supposing that we ought to avoid very great schools (a point I cannot agree to when the numbers are drawn together by the merits of the master), it will not follow, that we are to condemn all public schools. To condemn them all, is one thing; and to chuse the best, is another. Having thus, I apprehend, answered all objections to public schools, I will now give my own sentiments.

In the first place, the future orator, who, we must suppose, is to be in public life, and in all the bustle of business, ought, from his childhood, to be habituated with company, without pining in shades and solitude. The man who languishes in retirement, and rusts, as it were, in obscurity, always requires to be roused and pushed on; or he takes an opposite turn, and swells with vain conceit; for the man who never compares himself with another, naturally over-values himself. When he has occasion to practise what he has studied, he stumbles in broad noon-day; he is startled at every new object; and the reason is that he has studied in private, what he is to practise in public.

I shall but just mention the friendships that are contracted by a public education, and which are cemented with such inviolable affection that they continue in full force even in old age. For nothing is more endearing than for men to have been initiated together in the same sacred mysteries of learning.

How shall the man who separates himself from society, which not only men, but even brutes naturally affect, ever attain to what is called the knowledge of the world?

I am

I am farther to observe, that a domestic education confines the scholar to what he alone is taught; but in a school, he may likewise learn what others are taught. He will have hourly opportunities of being instructed, of being set right, of profiting by the reproaches of some, and of rivalling the praises of others. He will think it disgraceful to yield to his fellow, and glorious to out-do his superior. All these circumstances are incentives to the mind; and, though ambition in itself is a vice, yet it is often the parent of virtues. I remember my masters observed a custom that had its advantages. For they distributed their scholars into forms, and in repeating their lessons, they took place of one another according to the measure of every boy's proficiency; and thus every one of us had an opportunity of advancing in proportion to our improvement. This point of precedency was seriously canvassed; each boy fought hard for every place he took; and his ambition was crowned when he became head of his form. But he had more than one chance for this. For if he missed it once, he had, that day month, an opportunity of another challenge. Thus the head boy never grew remiss through success; and the others eagerly wished for an opportunity to retrieve their honour. So far as I can be a judge, this method was a sharper spur to our application, than were all the lectures of our masters, the cares of our tutors, or the wishes of our parents.

But as emulation is serviceable when we have made some proficiency in learning, so even the youngest beginners find it more agreeable, because it is more easy, to imitate their school-fellows than their masters. For it can scarcely be supposed, that children, when in the first rudiments of learning, will dare to aspire to the very summit of it all at once; they

they will chuse rather to cling to what is next them and, like vines twining round trees, by first embracing the lower branches, they will equal the highest. This observation is so true, that the master who prefers what is serviceable to what is showy will make it his business, while the mind is yet unformed, not to over-burthen the weakness of the scholar, but to manage his abilities, and accommodate himself to his capacity. For as the mouth of a vessel, when narrow, dashes aside the liquor that is hastily poured upon it, but receives it when it is conveyed into it gradually, and, as it were, drop by drop, till it is full, thus great attention ought to be paid to the dimension of a boy's capacity. For matters of difficult conception cannot enter into the understanding of a boy before it is dilated and open. It is therefore expedient to associate him with those companions, whom he is first to imitate, and then to outdo; and thus he gradually will give hopes of his arriving at excellency.

Let me add farther; that masters, when they have but one pupil to instruct, do not convey their instructions with that spirit, that efficacy, that energy as when they are prelecting to numbers. For they are then animated, and animation is the most considerable property of eloquence. The imagination must be touched, it must strike out pictures of objects, and draw them so lively as to be taken for realities, and for nature herself. Besides, the more sublime and elevated imagination is, the more powerful are the springs that impel its motions: glory therefore, gives it greatness, and enterprise, strength and its joy consists in being still intent upon some noble attempt. A man feels a certain secret indignation rise within himself when he employs upon a single auditor those powers of speaking which he so laboriously has acquired: he thinks it ridiculous to

to raise his manner above what is required in ordinary conversation. And, in fact, let a man figure to his own mind, an orator declaiming, or a speaker haranguing, his motions, his utterance, the vehement agitations both of his mind and person, his ecstasies, and, to mention nothing else, the fatigue he undergoes, and all this to a single hearer, could such a speaker be looked upon as being better than a madman? Were every audience to consist of a single hearer, there would be no such thing as eloquence upon earth.

CHAP. III.

Concerning the Symptoms of Genius in a Boy.—The Management of his Capacity.—His Diversions.—That Boys never ought to be beaten.

An able master, as soon as a boy is delivered over to his care, will examine his natural capacity and disposition. In children, the chief symptom of capacity is memory. Its properties are twofold; a ready conception, and a firm retention. The next symptom is imitation; for that too is the property of a docile nature; but with this restriction, that it be understood of a boy's happily expressing those matters he is learning, and not a man's manner or walk, or some peculiarity about him that is perhaps still more striking. I have no great opinion of any boy's capacity, whose whole aim is to raise a laugh by his talent of mimicry. For, with me, the virtuously disposed boy is the only ingenious one: because I look upon a mischievous disposition to be worse than a slow capacity. Now a boy, virtuously disposed, is very different from a dunce or a blockhead. Such a boy, as I chuse, will readily

learn what is taught him; he will sometimes be i
quisitive, but still he will rather follow than ant
pate. It seldom happens, that a premature shoot
genius ever arrives at maturity. Such are they wl
are dexterous in little matters, and pushed on l
impudence; the whole extent of their power is se
all at once. They, however, succeed so far th
they string words together, and with an assurance
face, without being under the least apprehensi
through modesty, they pour them out. Their pe
formance is inconsiderable, but it is quick. The
virtues are not of the true kind; the roots of the
knowledge have not a deep hold; like seed that
sprinkled upon the surface of the ground, they soc
shoot out; and like stalks that only seem to promi
corn, they ripen and rot, without being fit for rea
ing. We are pleased with such proficiency in
young a creature; but it is soon at a stand, and the
our admiration is over.

When a master has observed all these appearance
he can soon judge in what manner the capacity
his pupil is to be managed. Some are indolent u
less they are pushed on; some disdain to be con
manded; fear awes some, and disheartens other
some hammer out their learning, others strike
out at a heat. Give me the boy who rouses whe
he is praised, who profits when he is encourage
and who cries when he is defeated. Such a boy wi
be fired by ambition; he will be stung by r
proach, and animated by preference; never shall
apprehend any bad consequences from idleness i
such a boy.

Meanwhile, all boys require some relaxation fro
study; not only because we know nothing that ca
bear with perpetual application (and even certai
inanimate and senseless things require to be unben
ed in order to preserve their elasticity), but becau
applicatic

application to learning depends upon the inclination, which is a thing that is not to be compelled. For this reason, the minds that generally resist compulsion, when refreshed and repaired, return to study with double vigour and keenness. Neither am I displeased with a boy who is fond of diversion; for even that is a sign of sprightliness; and when I see a boy always sour and always serious, I never can think that he will pursue his studies with any spirit, when at the time of life which nature has chiefly fitted for the love of diversion, he is dull and indifferent about it. A mean, however, is to be observed in this respect; for a total prohibition of diversions may give a boy an aversion to learning, and too frequently exercising them may bring him into a habit of idleness. Some kinds of diversions, however, are proper for improving young minds; for instance, when they challenge one another upon little questions. Besides, in such sorts of diversions boys discover their natural dispositions; for I observe there is no age so tender as that instantaneously to learn what is good and what is bad; and the best time for forming it is, when a boy is incapable of deceit, and when his disposition is most pliable to his master's. For evil habits, when they once settle, are more easily broken then mended. We cannot, therefore, begin too early to inculcate upon a boy that he is to do nothing through selfishness, through malice, or passion: and we are always to carry in our minds what Virgil says;

* Train but the tender age, you form the man.

I am by no means for whipping boys who are learning, though I know it to be a general practice, and that Chrysippus is not against it. In the first place, there is somewhat that is unseemly and slavish

* Orig. Adeo in teneris consuescere multum est.

in

in the practice; and it must be owned, that, if y
suppose them to be somewhat grown up, it is
frontive to the highest degree. In the next pla
if a boy's genius is so illiberal as to be proof agai
reproach, he will, like a worthless slave, beco
insensible to blows likewise. Lastly, if a master
assiduous and careful, there will be no occasion
use force. The negligence that prevails at pres
amongst tutors is such, that, instead of obliging a b
to do his business, he is punished for not doing
Let me just add; when you whip a young boy
his faults, how are you to treat him when he gro
up to be a youth, when he will be above all fear
such chastisement, and when his studies are
greater difficulty? I shall only observe farther, t
while a boy is under the rod, either pain or f
often occasions indecencies too shocking to be m
tioned and offensive to modesty. The shame of t
dejects and dispirits them, makes them shun be
seen, and even weary of their lives. Now, if a n
ligence should prevail in chusing men of virtue
tutors and preceptors to youth, I should blush
say to what shameful abuse some worthless fell
may carry this practice of whipping boys; wh
others sometimes, infamously, may take advantage
the poor wretch's fears. I shall say no more up
this head; the reader will but too easily comp
hend what I mean. Meanwhile, it is sufficient
me to hint, that no man ought to take too much
berty with an age so tender and so liable to inju
I shall now proceed to lay down the arts necess
for the pupil who is to be thus instructed, so as t
he may become an orator, and mark out in wh
manner they are to be pursued in the different sta
of youth.

CHAP. I

CHAP. IV.

Encomium upon Grammar.—The three Properties of Style, viz. Correctness, Perspicuity, and Elegance.—The Properties of a Discourse.—Of Orthography.

When a boy is able to read and write, he is immediately put under the care of a professor* of classical learning. It makes no difference here whether the language he is to study be Greek or Latin; though I am of opinion he should begin with Greek. Both are to be studied in the same manner. Now this profession is divided at first into two branches; correctness of style, and the explication of the poets; a division which is of greater importance than it appears at first to be. For, in order to write well, we are supposed to speak well, and we must read the poets correctly before we can explain them, and all must be guided by critical judgment. In this respect the ancient professors were so rigorous, that they took upon them not only to censure particular passages, and to remove supposititious books as a spurious brood intruding into a family; but they made an arrangement of authors, allotting to some an ordinary† and to others an extraordinary

* Professor] Orig. Grammaticis. But it is plain from the whole scope of our author's discourse, that he means not a grammarian in the sense we take the word, but a professor of classical learning.

† Ordinary] Orig. Auctores alios in ordinem redigerint, alios omnino exemerint numero. Monsieur Rollin, who published, and the Abbe Gedoyn, who translated our author, understand this passage, as if Quinctilian meant that the grammarians had arranged some authors into their several classes, and had wholly excluded others from the name of authors. But we have a very great authority, that of Priscian, who tells us that the expression in ordinem redigere signifies the same as we say, in an English military phrase, to turn a man down into the ranks from being an officer,

traordinary degree of merit. Neither is it enough that a professor has read the poets; he ought to canvass every species of writing; not only on account of the narrative, but the words, which often derive their force from the author who uses them. Without some knowledge of music, a professor cannot be accomplished, as he will have occasion to treat of measures and numbers; and without astronomy he cannot understand the poets, who (to give only one instance) so often mark the seasons by the rising and setting of the heavenly bodies. We see, almost in all poems, a vast number of passages relating to the most abstruse points of natural philosophy; besides, Empedocles amongst the Greeks, and Varro and Lucretius amongst the Latins, have laid down systems of philosophy in verse; therefore, a professor must not be ignorant of that kind of learning. He must likewise possess no common degree of eloquence in order to express himself with propriety and perspicuity upon all the several points I have here mentioned. It is therefore intolerably impertinent in some, to treat this as a dry, trifling profession; for unless the future orator lays his foundation deep in the liberal arts, all the superstructure he shall afterwards raise upon it, must tumble to the ground. In short, this profession is to the young a necessary, and to the old an agreeable, assistant in retired study; and is perhaps the only branch of learning that has in it more of the solid than of the showy.*

officer, and è numero eximere, is to raise a man above the ranks. This, notwithstanding the objections of the above two gentlemen, is a natural and easy sense of the words, and much better than what they have given.

* What immediately follows here in the original, though very useful to a Latin orator in Quinctilian's time, can be of no service to a British one, and therefore I have followed Monsieur Rollin's example in omitting it here.

But

But to proceed. Style ought to have three properties; correctness, perspicuity, and elegance. For propriety, which is the main consideration, is now generally comprehended under the head of elegance. As these three properties have three faults directly their reverses, they must be examined by the rules of correct speaking, which is the first purpose of grammar. This is expressed in words either standing single or connected with others. I now mean a word in its general sense; for under that a double sense is implied; the first signifying words as connecting together a sentiment. As Horace says,

Verbaque provisam rem non invita sequuntur.

"And words will answer when the mind conceives."

The other sense is when they stand disjunctively; as, I write, I read. In order to clear up any confusion in this matter, some chuse to mark the several senses under which words may be arranged by the terms words, expressions, and modes of speech. Now, every word is native or foreign; radical or composite; simple or metaphorical; common or coined. One is more apt to apply a single word improperly than properly. For a word, however proper, beautiful, and sublime, it may be, when connected with others in a sentence, yet may lose all these characters when it stands detached from its connexion with the rest of the sentence or the order of the discourse.

Certain rules are to be observed in speaking, and others in writing. Now language consists in rationality, antiquity, authority, and usage. Its rationality depends chiefly upon analogy, and sometimes upon etymology. Its antiquity recommends itself by a certain majesty, and what we may call, reverence.

reverence. Its authority is to be derived from orators or historians. As to poets, they are sometimes under compulsion by the nature of their verse; though sometimes without any such compulsion, they prefer one manner of expression to another. As in Virgil; Simo de sterpe resisum; and Aëriæ quo congessere Palumbes; and Silice in nuda, and the like. Now, the judgment of very great men in point of eloquence stands in place of a rule, and it is glorious to offend against grammar, when the offence is authorized by such leaders. The common usage of learned men, however, is the surest director of speaking; and language, like money when it receives the public stamp, ought to have a currency.

As to words recovered from antiquity, they not only have many partisans, but it must be owned that they give to a style a pleasing air of majesty. For they borrow their authority from age; and by being so long disused, they have the graces of novelty. But we must be moderate, nay sparing, in the use of them; neither must they be too antiquated; for nothing is more disgusting than affectation. Nor ought they to be such as are brought from the remotest and most obsolete times; for instance, Topper,* Antigerio, Exantlare, Prosapia; nor such as the Salian verses are composed of, which are unintelligible even to their own priests; but the rites of religion will not suffer them to be altered; and they must be made use of because they are hallowed. But how wretched must that style be that requires an interpreter, since the greatest excellency of style is perspicuity. Therefore, as of our new words the oldest are the best, so, of our old words, the newest are the most desirable.

* Topper signified "quickly," antigerio "very."

The

The same observations hold with regard to authority. For though we think that we can never err while we make use of the words that have been used by the greatest authors, yet it is of great importance for us to observe not only what they said, but what they taught. For nobody would now endure the words* tuburcinabundum or lurcabundum, with the authority even of Cato on their side; nor hos lodices, though a favourite phrase of Pollio; nor gladiola, though used by Messala; nor parracitadum, which appears uncouth even in Cælius; nor can even the example of Calvus reconcile me to Collos; and were these great men now alive, they would not make use of such words.

I am now to speak of usage; for it would be extremely absurd, if we were to prefer the language which men did speak to that which they now speak. And, to say the truth, old language is no other than the old usage of speaking. But even this requires consideration, and we must in the first place have a clear conception of what is meant by the term, usage. Now, if you affix that term to a general practice, you endanger not only your language, but (what is more valuable) your morals. For where can you find virtue so prevalent as to have the majority of mankind for her followers? Therefore, pulling up the hair by the roots; curling it into stories; excessive drinking in bagnios, though they are now the mode in Rome, will not hereafter be accounted amongst our usages, because they are all of them practices that are liable to reproach; but washing, shaving, and dining are usages. Thus in speaking, a vitious habit, however general it may be, is not to be taken for the rule of language. For, not to mention how unskilfully the common

* One who eats by stealth, and one who eats voraciously.

people speak, don't we daily hear the barbarous exclamations of whole theatres, and the vulgar of the circus? I therefore look upon the general practice of the learned to be the usage of language, in like manner, as the general practice of the virtuous is to be considered as the usage of life.

Having thus laid down rules for speaking, I now come to mention those for writing. The Greeks call this ορθογραφια, and we term it the art of writing properly. For my part, excepting where practice has ordered it otherwise, I think every word ought to be written just as it sounds. For the use of letters is to preserve the words, which, like a deposit, are to be fully presented to the reader: and therefore they ought to express what we are about to say.

Such, in general, are the rules for reading and speaking correctly. As to the two other heads, those of speaking with energy and propriety, though I am far from excluding the grammarian from handling them, yet as I am yet to treat of the duties of a public speaker, I reserve them to a more elaborate discussion.

I cannot, however, help once more recollecting, that some people will think all I have said is too minute, and may be a hindrance, instead of a help, to those who aim at higher studies. But I am far from being of opinion that a student ought to dip into all the scruples and quirks of grammar; and I believe it is by these only that genius is pinched and minced away. I am therefore to observe, that, in this study, nothing but the superfluities of it are hurtful. Does Marcus Tullius make the meaner figure as an orator, because he bestowed a great deal of pains upon this art, and because, as appears from his letters, he rigorously insisted that his son should always speak with propriety? Was the spirit of Caius Cæsar cramped by the treatises he wrote concerning analogy:

logy; or is the genius of Messala less brilliant because he wrote so many books not only upon single words, but single letters? Studies of this kind never obstruct those who take them in their passage, but those who dwell upon them.

CHAP. V.

CONCERNING THE READING THAT IS PROPER FOR A YOUTH AT SCHOOL.

I AM now to speak of reading: but here practice alone can inform the young gentleman, where he ought to take breath; where he is to lay the accent in a line; where he is to finish one period or begin another; when he is to raise, and when to lower, his voice; and at every turn to know when to speak slow or quick, with spirit or with softness. I shall, however, upon this head, recommend one general rule, in order to enable him to do all I have mentioned; which is, Let him understand what he reads. When he reads a poem, let his pronunciation be manly; let it be serious, but not without a certain sweetness; without any thing in it that is prosaic; because a poem is a song; and poets themselves tell us that they sing. Yet let this harmony be without any of those quaverings or meltings that are now so much in practice. We are told of a very just observation made by Caius Cæsar, upon this head, when he was but a youth:* if you are reciting, said he to one, you recite most wretchedly; you are reading, you recite. Neither am I of opinion

* If you] Orig. Si cantas, male cantas; si legis, cantas. Though the wit of this passage is obvious, yet it is not quite easy to translate it properly. The cantatio was a kind of recitative in which the Romans read poems; the lectio was applied to prose writings.

with

with those who require a theatrical manner of delivering speeches in plays or poems; and yet they ought to be spoken with such a cadence as may distinguish them from what the poet says in his own person.

Great care is to be observed with regard to what remains. In the first place, that tender minds (for every thing makes a deep impression upon them while they are yet rude and uninformed), learn not only what eloquence, but what* virtue, is. For this reason it is extremely proper that they begin with reading Homer and Virgil; but a riper judgment is required to understand all their beauties; for they are to be read over more than once. Meanwhile, the sublimity of heroic verse elevates the soul, it derives fresh vigour, it imbibes virtuous principles, from the importance of the object.

Tragedies are useful; and lyric poets too; provided, you not only select your authors, but the passages in the several authors. For we meet with many lewd passages in the Greek authors; and I think some things in Horace ought not to be explained to a young gentleman. As to elegies, especially love ones, and obscene hendecasyllables, too shocking to be particularized here, let the young gentleman be kept from them if possible; at least till he is more advanced in years and strength. As to comedies, I shall soon have a proper opportunity to mention the service they may be of in his education, because they contribute greatly towards eloquence, as reaching to all ranks and characters of men. When they are moral, young gentlemen can read nothing that is more improving. I speak her

* Virtue] The original is, non modo quæ diserta, sed magis quæ honesta, sunt, discant. In this sense, Honestum, according to Burmin. does not signify being virtuous, but elegant, genteel, what is becoming a man of quality.

of

of Menander, chiefly, though I don't exclude others. For we have Latin writers this way, who are somewhat improving too. But boys ought to study those that tend chiefly to cultivate their genius and enlarge their understanding. Other studies, that relate to learning only, come in their proper time.

The Latin poets, however, are very profitable for a school-boy; though they excel not through the force of art, but of genius. You may meet in the first of them with freedom of expression; their tradegies are distinguished by a pathetic, their comedies by an elegant, diction, and by an attic turn of wit. The disposition of their story, too, is more artful than what is found in the works of the moderns, who rest the whole of their merit upon sentiment only. I will likewise venture to affirm, that we must have recourse to them for elevation and manliness of thought, as I may call it; since we, at the time we degenerated from true eloquence, plunged ourselves into every kind of effeminacy and immorality. In short, we ought to be guided by the practice of eminent orators, who have recourse to ancient poets either to strengthen their pleading or to embellish their eloquence. For this practice, I appeal to the great authority of Cicero; and often we see Asinius and his equals, or immediate successors, quote passages from Ennius, Accius, Pacuvius, Lucilius, Terentius, Cæcilius, and others; not to display their own learning, but to relieve their hearers, when their ears, tired out with the wrangling of the bar, required to be relieved by the charms of wit. This practice was of great service to their causes, when the sentiments of the poet served as so many evidences for what was advanced by the pleader. But my first observation, on this head, is chiefly applicable to boys, my last to men; as the love of learning and the practice of read-

ing lasts not only while we are at school, but while we are in life.

The grammarian is to attend to many minute points, in the course of his teaching. While his pupil is reading a poet, the master is to make him construe the line, and unbrace the versification, and give an account of the properties of the several parts that compose it; which last practice is always necessary in poetical, and sometimes in prose, compositions. The scholar ought likewise to be put upon finding out what expressions are barbarous, what are improper, and what are uncouth or ungrammatical; not with a view of disparaging the poet, who generally is a slave to rhymes, and therefore, pardonable (for real faults lose their name in composition, and hence the terms of Metaplasmos, Schenatismos, and Schemata, were invented to make a virtue of necessity), but to point out the several liberties a poet is indulged in, and to exercise his memory.

It is, likewise, proper for the young student to be instructed as to the several significations which words may admit of. He is likewise to give a peculiar attention to words that are fallen in desuetude, and seldom to be found but in the dictionary. Above all, he ought to be careful in making him master of the several topics, which are the ornaments not only of a poem, but of a pleading: and to instruct him in the two figures, the one relating to words, the other to sentiments; which two heads, together with that of tropes, I refer to their proper places, when I come to treat of the embellishments of a discourse.

But nothing is so necessary as to make him fully sensible, what powers there are in a just structure, in a graceful disposition, and in the propriety of characters;

characters; where the beauty lies in sentiment, where in expression, where the style ought to be diffused, and where contracted.

To this may be added historical details, which ought to be extremely exact, but not carried into any needless, useless, endless, disquisitions. It is sufficient if it is proved that the facts are received or recorded by eminent authors. For a master to be taken up in canvassing what every despicable fellow has advanced, discovers either a great barrenness of judgment, or a great measure of vanity; besides, it hampers and smothers a young gentleman's genius, which might otherwise be much more usefully employed. For the man who is at pains to turn over every page of history that is unworthy even of being read, such a man is capable of writing commentaries upon old women's gossiping stories. Now the common-place books of professors are very often filled with such impertinent stuff, without the* authors themselves being sensible of it. Didymus, one of the most volumnious writers ever lived, fell into that blunder; for after he had run down a story as being utterly improbable, he was shewn that very story in one of his own books. This happens chiefly to those who deal in ridiculous, shameful, anecdotes. Every impudent

* Authors] Orig. Atqui pleni sunt ejusmodi impedimentis grammaticorum commentarii, vix ipsis qui composuerunt satis noti. Burman, upon this passage, gives us a very extraordinary specimen of his critical capacity. "We cannot" says he, "suppose a man to forget what he has wrote, therefore instead of noti we are to read notis, and then the sense will be, that the grammarians don't know what obstruction such impertinent stories bring to study." But Quinctilian happens to tell the story of Dydimus on purpose to shew that a man, by writing too much, may forget what he has wrote, and thereby fall into inconsistencies; and it was no wonder if this was the case of Dydimus, for we are told that he wrote no fewer than 3500 Volumes.

profligate

profligate fellow gives himself the liberty of lying as much as he sees proper; for he thinks he may do it with safety, when he quotes, for what he advances, books that never were wrote, and authors that never existed, and therefore cannot be found. For sharp-sighted critics often detect them when they appeal to authors that are known. Upon the whole, therefore, I must reckon it amongst the excellencies of a professor, to be ignorant of some things.

CHAP. VI.

OF THE FIRST EXERCISES OF A YOUNG GENTLEMAN AFTER BEING ENTERED UPON HIS STUDIES.

Having run through two divisions of this profession, the one regarding the art of speaking, the other the explanation of authors; the first of which relates to method, the latter to history, we are now to add certain rudiments of eloquence for the use of those pupils who are yet too young to enter upon the business of an orator. In the first place, let them tell the fables of Æsop, as soon as they have done with the gossiping stories of their nurses, in a simple plain manner, and then let them* endeavour to better that plain, simple manner, by reducing them to writing. As to poetry, let him first analyse the lines, then explain them in other words, and then give a

* Let them endeavour] Orig. Deinde eandem gracilitatem stylo exigere condiscant. The Dutch commentator Burman, and Mr. Rollin the French editor, are of very opposite sentiments with regard to the meaning of this passage. The latter thinks that the author's meaning is, that the boy should reduce what he had told to writing; the former, that he ought to discharge or unlearn the simple style of speaking by writing a better. I am somewhat inclined to be of the Dutchman's opinion, but have translated the passage in a sense which answers both purposes.

free

free paraphrase of them, in which he is at liberty to contract or enlarge as he sees proper, provided he keeps to the sense of the poet. This is a task difficult to accomplished professors themselves, and the boy who succeeds in it tolerably well, is equal to any study. Let the professor then put his pupil upon writing sentiments, chrias, or useful stories, and striking characters; and let him give an account of the occasions and reasons why they were done or said, because they are a part of learning. The same principle runs through all the three, though the manner in each is different. A sentiment ought to be universally true: but the character is applicable only to a man. As to the stories, we have several kinds of them. One kind of them is in the nature of a sentence, and consists of a simple expression; for instance, he said, or, he used to say. Another is by way of answering; being examined, or, when he was told that, his answer was. The third is pretty much of the same kind, as if a man were not to say, but to do, a good thing (for a chria may lie in the action too); when Crates saw an ignorant boy, he struck his tutor. There is another kind, pretty similar to this; but we don't venture to term it a chria, but a κρειττον. Milo, after accustoming himself to carry a calf, carried a bull. All these are pretty much of the same form, and begin in the same manner, consisting equally in actions as words. As to the little stories that are taken from the poets, I am of opinion that a boy ought to learn them, not to improve his manner of speaking, but his understanding. Other things there are of greater importance and difficulty, which the Latin orators have relinquished, and are therefore thrown upon the professors of grammar. But the Greeks are better judges of the weight and the exercise of their art.

CHAP. VII.

CHAP. VII.

That Boys ought to be grounded in several Arts before they are put under the Care of a Profesor of Rhetoric.—An Enquiry whether such Arts are necessary for the future Orator.

I HAVE now, with all possible brevity, spoken of the necessary parts of grammar, for it would be an endless matter to pretend to exhaust the subject. I am next to touch upon other arts, which, I am of opinion, young gentlemen ought to learn before they are put under the care of a rhetoric master; and thereby I shal complete the circle of science, which the Greeks term encyclopedia: for they have several studies to pursue at the same time of life. Now, as those studies are arts in themselves, and as, without them, a man cannot be a complete orator, though of themselves they cannot make him such, some question may arise whether they are necessary to this work. "For, say some, what benefit does a man receive, when he is to plead a cause or deliver an opinon, from knowing how to raise an equilateral triangle upon a given line? Or will an orator defend an accused party, or harrangue an assembly the better for knowing the properties and names of al the sounds and stops of music?" It is possible the gentlemen who talk in this manner may give instances of many excellent public speakers, who never attended a professor of mathematics, nor know more of music than the common pleasure it gives the ear.

Now, in the first place, I answer those gentlemen in the words which Cicero addresses to Brutus in his Orator, "That I am not forming an orator, upon any particular model either living or dead; but I am figuring, in idea an orator complete and

and all-accomplished." For, as the Stoics, when they figure a wise man, require him to be in every respect perfect, and what they call an incarnate god, and that he should be accomplished, not only in the knowledge of things divine and human, but formed to the knowledge of matters, that, taken by themselves, are little, and seem calculated only to gratify curiosity; not that quirks and quibbles can make a man wise, but because he ought not to trip even in the slightest matter: in like manner, music, mathematics, and several other arts I could mention, do not make an orator, who ought to be a wise man; but they assist in compleating one. We see several medicines and specific remedies, for diseases and wounds, that are compounded of various materials, and some of them contrary to one another in their effects, yet the whole composing a mixture which has not the quality of any one ingredient, but takes its virtues from the whole; and we see how the bee, from various flowers and herbs, works up the honey to a sweetness and flavour that no human industry can equal. Are we then to be surprised that eloquence, the most excellent accomplishment that heaven bestows upon man, requires the assistance of various arts, which, though far from appearing or displaying themselves in speaking, yet have a secret operation, and, as it were, a silent effect. Without them, a man may be well spoken; but I require him to be an orator. Those arts may not indeed contribute a great deal; but where even a little is wanting, there cannot be perfection, which, as all agree, is most desirable. The object of an orator's ambition lies indeed high, and, therefore, I require him to have every accomplishment, that he may thereby succeed in having many. But why are our hearts to fail us? There is nothing in nature that renders perfection in eloquence

quence unattainable; and it is shameful to despair, when it is possible to succeed.

CHAP. VIII.

OF MUSIC AND ITS EXCELLENCY.

Now I may rest my opinion upon that of the ancients. Every one knows that in former ages, music, that I may begin with it, was not only studied but adored, and its professors were esteemed prophets and sages. Were not Orpheus and Linus (to name no more) believed to be descended of the gods? And it is told of the first of these, that he not only quieted and charmed the passions of men barbarous and savage, and the fury of wild beasts, but even made the very stones and woods dance after him by the power of his music. Timagenes says, that music is the most ancient of all arts. The most famous poets are likewise of the same opinion; for they introduce musicians at the feasts of kings, singing to the harp the praises of gods and heroes. Thus, in Virgil, Iopas sings,

* The ever-changing moon and rolling sun.

By which that excellent poet declares, that the study of music is even joined with the knowledge of divine things. If this is admitted, it must likewise be admitted to be necessary to an orator. Now this is one of the parts of the profession of eloquence, which, according to my own observation, being abandoned by orators, was seized upon by philosophers, and therefore falls under my plan; and without the knowledge of all such matters there can be no perfection in eloquence.

* Orig. Errantem lunam solisque labores.

There

There cannot be a doubt that some eminent philosophers have studied music; for Pythagoras and his followers held it as a doctrine, which was unquestionably established by antiquity, that the world itself was created upon the principles of music, and that these principles were afterwards imitated by a Harp. And not contented with that harmony which arises from sounds differing in themselves, they have assigned a music to the movements of the heavenly bodies. For many of Plato's works, particularly his Timæus, is unintelligible, without a thorough knowledge of this accomplishment. Need I to mention philosophers, the greatest of whom, Socrates himself, when an old man, was not ashamed to learn to play upon the lyre? We are told that the greatest of generals have sung to musical instruments of all kinds; and the Lacedemonian armies were fired with courage by musical notes. This is the design of our having, in our legions, clarions and trumpets; and their sounds are raised and sprightly, as the Romans are superior to all other nations in military glory. It was not, therefore, without reason that Plato recommended music as a necessary accomplishment in a civil magistrate or a statesman. And the leaders of that sect which some thought to be excessively severe, and others cruelly rigid, were always of opinion that some wise men ought to bestow part of their time in learning this accomplishment. Lycurgus, who formed the rigorous system of Lacedemonian laws, approved of the study of music; and nature herself seems to have bestowed it as a gift upon man, to enable him to endure toil with the greater readiness. We see how rowers are heartened by singing; nor does this happen only in those works where the toil of many working at once is greatly alleviated by an agreeable voice leading up the chorus of the whole; for every man when at work, even

by himself, has his own song, however rude it may be, that softens his labour.

*I have hitherto run out in the praises of this enchanting art, but I have not yet shewn its connexion with eloquence. I shall not here enlarge upon proving that the studies of grammar and music have gone together. For Architas and Aristoxenus were of opinion that grammar was subject to music; and that both studies were formerly taught by the same master is proved by Sophron, who was indeed a writer of comedies, but they were comedies that Plato was so fond of, that he is said to have had them under his head when he died. We are told the same thing by Eupolis, where we find Prodamus teaching music and learning at the same time; and Hyperbolus, who is disguised under the name of Maricas, confesses that he knows nothing of music more than the rudiments of learning. Aristophanes, too, in more than one passage of his works, proves that anciently young gentlemen were educated in that manner. And in the Hyperbolimeus of Menander, the old man opposing the father who reclaims his son, amongst the other expences of his education brings in a large charge for the money he had laid out upon his learning music and geometry. Thence comes the custom of presenting a lyre round to the company after supper: and Cicero tells us, that when Themistocles confessed that he knew nothing of music, it was thought to be a defect in his education.] It was likewise the custom among the old Romans to introduce flutes and other musical instruments into their entertainments: and the verses of the Salii are set to music. As all these are Numa's

* Mons. Rollin observes, very justly, that these encomiums upon music are very high strained, when applied to eloquence; but it is probable that our author himself was a performer upon musical instruments, and passionately fond of the art.

institutions, they evidently prove that our ancestors, rude and warlike as they appeared, were not void of the knowledge of music, such as it was in those times. In short, it has become a proverb amongst the Greeks, that the illiterate have no acquaintance with the muses and the graces.

But we are now to treat of the advantages which the future orator may derive from music. This art has two kinds of measures, the one adapted to the voice, the other to the person; for grace and a good disposition is desirable in both. The musician Aristoxenus divided the management of the voice into notes and melody (ρυθμον and μελος εμμετρον) the one relating to the composition the other to the tune and the sounds. Well, it may be said, are all these qualifications necessary for an orator? I say they are. One teaches him to regulate his gestures, another how to dispose his periods, and a third how to manage his voice; all which have great effect in pleading; unless we should be absurd enough to think that a just disposition and a smooth turn is only proper for songs and tunes, and not for pleading; and that composition and cadence cannot be adapted to the several subjects of a discourse as well as of a song. Thus, in either vocal or instrumental music, the composition of sublime subjects is grand; of pleasing, tender; and of moderate, gentle; and through the whole, the notes are corresponding to the several passions they express. Now, in pleading, the rise, fall, and the variation of the voice, are managed so as to touch the passions of the hearers: by one disposition, both of words and voice, we excite the resentment, and, by another, the compassion, of the court. We even find the affections of mankind worked upon by those organs of the body that convey no sound. A graceful and just motion of the body (called by the Greeks ευσταλια) is necessary

and

and very serviceable to action, nor can it be acquired by any other art. But of this matter I shall speak in a proper place. To proceed; if an orator is to take particular care of his voice, what can be more connected with music? But we are not to anticipate what is to be said upon this head. I shall here be contented to mention one example, that of Caius Gracchus, one of the greatest orators of his time. While he was harranguing the people, a musician stood behind him with a pipe (called by the Greeks τονος), by which he regulated the tone of his voice according to its proper modulation. This was his constant practice amidst his turbulent pleadings, both while he was terrifying the nobility, and while they terrified him.

I shall here, for the sake of those who are not quite well instructed, and who are not quite clear-sighted, leave no manner of room to doubt of this matter. It is agreed on all hands that the future orator ought to read the poets. But can that be done without a knowledge of music? But* if any one is so obstinate as still to have a doubt of this matter, I can appeal to those who have composed poems to the lyre. I should enlarge upon this matter did I recommend this study as being a novelty. But as the practice has obtained ever since the days of Chiron and Achilles to this time amongst all who are not averse to a regular course of study, I shall not, by being over anxious in defending it, bring its utility in question.

But though, from the examples I have laid down, I have sufficiently explained the kind of music I hear recommend, and how far I judge it to be useful, yet I think it necessary to declare, without any reserve, that I do not mean those effeminate, lascivious quavers that are now introduced upon our

* The original is here very much corrupted.

theatres.

theatres, and deprive us of the small share of virility that still remains amongst us; but the music by which heroes were celebrated; the music which heroes themselves used. I do not mean the lewd airs practised upon flutes and fiddles, such as a young lady of any reputation would be ashamed of; but that kind, which being founded upon rational principles, is of the greatest efficacy in raising or soothing the passions. Thus, we are told that Pythagoras calmed the madness of certain young men who were offering violence to a house of reputation, by ordering a female musician to change her notes from sprightly to serious; and Chrysippus assigns a certain air of music to the lullaby by which nurses still their children. It is likewise no illiberal theme for a declamation, if we suppose a musician to have sung a phrygian* air in the hearing of a man who was sacrificing, but thereby becoming all of a sudden furious threw himself down a precipice, and the musician to be accused as being guilty of the man's death. Were an orator to speak upon this subject he could not do it without a knowledge of music; therefore, must not the greatest slighters of this art acknowledge that music is necessary to eloquence, the professed subject I treat of?

CHAP. IX.

OF GEOMETRY.

Some part of geometry is acknowledged to be of use to young students; because it is allowed, that it exercises the reason, whets the understanding, and

* Phrygian air.] These airs were the most spirited of any the ancients had. Upon the whole, if we are to judge from effects, the ancient music, though their instruments were more simple, was much more powerful than the modern; or else the ancients had much greater sensibility than the moderns.

facilitates the quickness of perception; but, at the same time, it is thought not to be of benefit as other arts are, after they are learned; but to benefit in learning. This is only a vulgar notion; and some very great men have, with the most rational views, bestowed vast study upon this art. For as geometry is employed upon numbers and mensurations, the knowledge of numbers, at least, is necessary not only to an orator, but to every one who has the least tincture of learning. But, in pleadings, it is very often of service. For a pleader is looked upon as a blunderer, not only if he is at a loss in his calculations, but if even a doubtful or aukward motion of his fingers betrays any diffidence in his summing up. As to the other, which is the practical part of geometry, it is very often employed in pleadings, for law-suits frequently arise about boundaries and mensurations. But geometry has a still nearer connexion with the art of an orator.

Regularity, in the first place, is necessary in geometry; and is it not so in eloquence? Geometry proves the consequences from the premises, and doubtful propositions from undoubted principles. Do we not practise the very same thing in pleading? For when a demonstration is to be formed from a number of premises, are they not in the nature of so many syllogisms? You may therefore hear people allow this art to have a nearer relation to logic than to rhetoric. Now an orator sometimes, though very seldom, reasons logically; and if the nature of his pleading requires it, he makes use of syllogisms, of the enthymenia, at least, which is the syllogism of rhetoric. Then geometry introduces proofs which the Greeks call mathematical* demonstration. Now what is more necessary than proof is, to a pleading?

* Γραμμικαι αποδειξεις.

Geometry,

Geometry, likewise, contains the principles by which we know how to distinguish between a seeming and a real truth. These fallacies in numbers are introduced by certain false calculations, which the Greeks term παραγραφαι * and which used to divert us when boys. But some other properties in geometry are of greater consequence. How probable is the following proposition? Those spaces that are bounded by lines of the same dimensions contain the same quantity of area. But there may be a fallacy here; because it is of the utmost consequence to know the shape of the bounded space; and mathematicians very properly blame historians for thinking it sufficient to describe the largeness of an island by a ship's reckoning while sailing round it. For the nearer to perfection any figure is, it is the more capacious. If, therefore, the bounding line shall form a circle which is of all figures the most perfect on a surface, it will comprehend a greater area than if it forms a just square. In like manner, a just square is more capacious than a triangle, and an equilateral triangle, than any other. But though some matters in this science may be obscure, yet I will bring an instance that will convince the most ignorant. Every one knows that an acre, in length, measures 240 feet, and 120 in breadth; from whence its circumference and contents is easily known. But a just square of 180 feet will be of the same number of feet with the acre in circumference; but its contents will be much larger. If the reader should not have curiosity to make the experiment, he may be convinced by a smaller number of feet. For a square of 10 feet makes 40 feet in circumference, and 100 feet of contents. But an oblong square of 15 by 5 feet will contain only three-fourths of the area of the just square, though the circumference of both contains the same number of feet. But supposing an oblong

* Fallacias in subductionibus rationum.

of

of 19 by 1, the circumference will be 40 feet, the same with that of the square of 100 feet in contents, but the contents of the oblong will only be as many feet as it is in length. Thus, whatever you take from the form of a true square is so much lost in the contents. Nay, it may happen that one circumference may be larger than another, and yet have less contents. All this is to be understood of plain surfaces; for, in hills and dales, any one, however ignorant, may see their* contents to be greater than their covering.

But does not geometry enable us to form a just theory of the world, where we are informed by the fixt, and unerring revolutions of the heavenly bodies, that nothing is made at random or by chance? May not this be of use sometimes to the orator? When Pericles, by explaining the theory of eclipses, re-assured the courage of the Athenians, who were terrified by an occultation of the sun; or when Sulpicius Gallus, in the army of Lucius Paulus, lectured upon an approaching eclipse of the moon, lest the soldiers should be discouraged at a matter that bore so much the appearance of a divine prodigy, did not both the one and the other act the part of an orator? Had Nicias been master of this science when he was in Sicily, he would not have lost a fine army of the Athenians which was thrown into rout by a sudden panic. For when the same thing happened to Dion, as he was marching to destroy the tyranny of Dionysius, it was attended with no bad consequences. I admit that these examples are chiefly military, and I shall but just mention the long and obstinate defence which Syracuse made by the sole assistance of Archimedes. It is sufficient for my purpose, if it shall be admitted that many questions arise which can be solved upon no other principles but those of

* Plus soli quam Cæli.

geometry;

geometry; such are division in general, division in infinitum, mathematical or arithmetical progression, all which are only to be solved by lineary demonstrations. In short, if (as I shall shew in the following book) an orator ought to know how to speak upon all subjects, he cannot be without a knowledge of the mathematics.

CHAP. X.

CONCERNING PRONUNCIATION AND ACTION.

Some regard ought to be paid to the player, because he may be of service to the future orator, so far as concerns a just pronunciation, but no farther. For I would neither have a pupil in this art to imitate a womanish tone by quavering, nor the voice of old age by faultering, nor a drunken sot by stuttering, nor an abject slave by wheedling. I don't want him to ape the manner of the lover, the miser, or the coward. These are qualifications, which, besides their being unnecessary for an orator, debauch the mind, while it is yet tender and uninformed, in the early years of life, because frequent imitation settles into a habit, and at last infects our manners. Neither is it every gesture or motion that we are to borrow from players. For, though the orator, in some measure, may be beholden to them in forming both, yet, in his execution, he ought to be very different from the player in the management both of his features, his hands, and his feet,* in the use of which he

* Orig. Excursionibus, The precepts here laid down by Quinctilian are very fine and applicable to every species of speaking in every age and country; yet the expression here in the original seems to allude to a custom which in England seems pretty odd.

he ought not to be excessive. For if a public speaker practises any art, it ought to be that of concealing art, so as to make it seem to be nature.

What then, it may be asked, is the business of an instructor in this matter? In the first place, he is to correct every defect of pronunciation in his pupil; that, in speaking his words, every letter be distinctly and properly expressed. We are apt to mince some words and mouth others: both manners are faulty. Some letters we are apt to lisp in pronouncing, as if they were too barking to be expressed properly, and we substitute in their room certain similar sounds which deaden them into a dull affinity with the others. Demosthenes pronounced L instead of R through a natural impediment, and both letters have the same sounds with us as with the Greeks. In like manner the C and the T are, for the same reason, often softened down into the G and the D. These are faults which a master ought not to tolerate, no more than he ought, the false delicacies which some entertain about pronouncing the letter S. He ought not to suffer his pupil's words to stick in his throat, nor the sound to whistle through his teeth. Neither (which is a great blemish in speaking) is he to lower the simple sound of a word to an improper emphasis, a fault which the Greeks term κατασεσυλλεσμενον for so they call the noise of flutes when their stops are closed, and when by throwing the sound directly down into the large bore of the flute, you flatten the note.

A skilful master will likewise take care his pupil does not suffer the last syllables of a word or sen-

odd. It is that of an orator's walking while he was delivering his oration, and which our author would have his orator to use more sparingly and modestly than a player. It may however signify no more than that an orator is not allowed to make use of so many airs and flights as a player does.

tence to sink; that the whole of his discourse may be alike and even: when he is to exert his voice, let it be known by the strength of his lungs and not by the motions of his head; that thereby the gesture may suit the voice, and the face the gesture. Care must likewise be taken that the speaker keep his face full to the audience, that there be no distortions about his lips; that his mouth be not convulsed; that his look be manly, his eyes erect, and his head hanging neither to one side nor another; for a disagreeable appearance is of great prejudice in many respects. I have seen many whose eye-lids, upon the smallest exertion of the voice, turned upwards; others downwards; others varied, one lid starting up to the forehead, and the other covering almost the whole eye. I shall, by and bye, shew of what great importance all those circumstances are; and how nothing can be pleasing that is not becoming.

The young orator may likewise learn from the actor with what grace he is to deliver a narrative; how to blend authority with persuasion; with what spirit resentment should rise; and with what temper compassion ought to descend. He will succeed the better in all this, if he selects from dramatic authors certain passages the best fitted for his purpose; that is, those passages that may be best adapted to the practice of the bar, and which will not only improve his delivery, but his eloquence. These may be the exercises of our pupil till years render him capable of higher attainments. Let him then read orations; and when he is touched with their beauties, then let some accurate, able master, be about him. Let the pupil not only edify by reading, but let him be obliged to get by heart the choice passages of what he reads; let him repeat them in the attitude and manner of a pleader, a practice which will be of ervice at once to his voice and his memory.

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I have no objection to our young student's learning his exercises at an academy.* I don't mean those academies where combatants prepare themselves for athletic exercises by means of wine and oil, and, by being constantly intent upon them, neglect the mind for the sake of the body. I would have our pupil conceive an utter dislike to all such places. But the schools where gracefulness of motion and behaviour is taught, go by the name of academies too; where a young gentleman learns how to manage his arms; how to use his hands so as not to appear aukward and clownish; that none of his postures be unbecoming; that he may walk with a graceful mien; and accommodate his head and eyes to the sway of his body. Now, as no one can deny all these to contribute to beautiful delivery, so beautiful delivery must be allowed to contribute to true eloquence. It is likewise undeniable that a young gentleman ought to learn every accomplishment that is necessary for his education; especially chiromany† or gracefulness of action, which took its rise in the ages of heroism, was practised by the greatest men of Greece, was approved of by Socrates, ranked by Plato amongst the civil virtues; and recommended by Chrysippus in his treatise upon the education of young gentlemen. We read that even the Lacedemonians ranked a certain kind of dancing amongst the manly exercises, as being useful in war. Neither was this practice held in disrepute amongst the old Romans; as may be proved

* Academy. Orig. Palæstra. In those academies nothing but fencing, dancing, riding, and boldily exercises were taught.

† Chiromany] I have ventured to give this word an English termination, and to explain it by gracefulness of action. It properly signifies the law of the hands, but our author calls it the law of gesture; and it was a term in dancing: the antients looking upon the proper disposition and management of the hands and arms to be of the greatest consequence to gracefulness of motion.

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by the dance which continues still to be practised by priests, and hallowed by religion. We likewise have Crassus approving of young gentlemen's attending an academy, in the third book of Cicero upon the character of an orator, where he says;* the orator ought to speak with a strong and spirited sway of his body, which he is not to borrow from plays and farces, but from the camp, and even from the academy of arts; and this part of education has, without any reproach attending it, been transmitted to our days. I would not however have a young gentleman attend an academy too frequently, and not at all, after he is a little grown up; for I am not for having the mien of an orator the same with that of a dancing-master; but I think that when a boy, while young, enters upon this exercise, it communicates a secret gracefulness to his manner ever after.

CHAP. XI.

That it is profitable for a young Gentleman to learn several Things at the same Time.—Because it is a property of human Understanding.—Boys, the more they study when young, are the better reconciled to it when grown up.—When young they have most Leisure.—A good Preservative from Idleness.

It is a doubt with some, if all those accomplishments are to be learned, whether they can all of them be taught and understood, and practised at one and the same time. Some hold the negative; because, say they; the mind is confounded and tired out, by so many studies, each of them of a different tendency, and neither their capacity, their strength, nor their time is, equal to such variety; and however

* The orator] The word our author makes Cicero say is inclinatione, but I don't find that any copy of Cicero uses any other word than inflectione.

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they may suit a more advanced age, yet a boy's genius ought not to be overloaded.

But they who reason in this manner are not sufficiently acquainted with the powers of human nature; which is so active, so quick, and, if I may say it, so omnipresent, that it is almost impossible for it to be confined to a single object; but it can apply its strength to several, not only in the compass of a day but of a moment. Musicians, for instance, do they not at the same time employ their memory, their voice, and a variety of skill, by* touching some strings with the right hand, while they are leading, stopping, and tuning others with their left; even their foot is employed in beating time; and all this all at once. In our own profession, when we find ourselves unexpectedly obliged to plead all of a sudden, are we not speaking one thing while we are thinking upon what we are to say next; are we not, at one and the same time, obliged to supply invention with matter, words with propriety, and action with gracefulness, and all the while be attentive to our pronunciation, our looks, and our gestures? If, with one effort, we can unite all those considerations so differing from one another, why may we not allot one hour to one, and another to another, study, especially as the mind is relieved and refreshed by variety, and on the other hand, it is irksome to be constantly poring over the same study? Reading, therefore, relieves writing; and the fatigue of reading may be diverted by its being laid aside for writing. Let us be employed in ever so many studies, yet still we, in some measure, come fresh to that which we are beginning.

* Touching some strings] We know very little of the Roman music: perhaps if the whole of this passage were rightly considered and compared with the forms of their instruments, it might throw some light upon the manner of performing upon them.

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The brightest genius will be blunted, were it, for a whole day, confined to hear the lessons of a master upon one subject only. Our minds are like our stomachs; they are whetted by the change of their food, and variety supplies both with fresh appetite.

How is it with the other scheme of education? Let the young gentleman apply to grammar only; then to geometry; and then laying both these aside, to music, without regarding what went before; while he is studying Latin, let him not have a thought of Greek; in short, let him think only upon what is before him. But how would this doctrine sound with farmers, that they are not to mind and cultivate, at the same time, their lands, their vineyards, their olive-trees, and their plantations. That they are not, at one and the same time, to employ any care upon their meads, their flocks, their gardens, and their poultry? While we ourselves allow some part of our time to public business, some to our friends, some to our private affairs, and a little to pleasure; and any one of those pursuits, if we attended to nothing else, would tire us out. It is therefore, upon the whole, more easy to apply to many things at once, than to one thing long.

Believe me, we need not be under any, the smallest, apprehensions, lest boys should be too much fatigued with the toil of studying. No time of life bears with it better. You may perhaps think this a paradox, but experience confirms it to be literally true. For the genius, before it grows hardened by age, is then the most susceptible of instruction. One instance will make this quite plain. Within the first two years after children can articulate their words, they can speak, almost, every thing, without an instructor; whereas the slaves we import from other countries, though full grown, are several years before

before they can speak our language. But, as a stronger proof of this, take one who is of age and enter him upon learning, and then you will have reason to say, that they who are the most expert in their several professions, are such as have been initiated into them from their childhood. Nay, boys, by nature, can better endure toil than young men can. Observe how often a child falls to the ground, and how little he is hurt; see him crawling about upon his hands and feet; a little time after, you may see him constantly at play, and running about from morning to night; and all this without any trouble, because they carry very little weight about them, and so do not fatigue themselves. I suppose it to be the same thing with the mind of a child. It takes little force to put him in motion; nor does he depend for instruction upon his own efforts; and by submitting entirely to his master's formation, he is not so subject to be tired as he would were he more advanced in years. Add to this another advantage which children have; as they implicitly follow their teachers, so they are no judges either of what they have acquired, or are to acquire; neither are they uneasy at the difficulties of their future studies. Now, daily experience teaches us, that fatigue is more tolerable than reflection is to the mind of man.

Give me leave to say, that a child has more time to spare, than he can ever have, after he is grown up; for the hours of childhood are all employed in receiving instruction from others. But when he withdraws to his room in order to form his style, when he comes to invent and to compose, then he may neither have leisure nor inclination, to enter upon the studies of childhood. Since, therefore, the professor neither can, nor ought to, take up the whole of a young gentleman's time, lest he should give him a loathing

ing for study, what can better employ, than such studies as I have mentioned can, his leisure hours. But they are studies that I am not for taking up the whole of a young gentleman's attention: I am not for his singing as well as those who make it their profession; nor for his knowing every nicety of the mathematics. I am not for his speaking like a player, nor his walking like a dancing-master. But should I even require he should be quite complete in all those respects, he has abundance of time. A fine genius (for I don't talk of a dunce) has a great deal of time to employ upon study. Let me ask, in the last place, Why was Plato so eminent in all the exercises which I have recommended to the study of our future orator? Not contented with what could be taught at Athens, or by the Pythagoreans whom he visited in Italy; he even applied to the Egyptian priests, and made himself master of their mystic learning.

We are apt to cloak our own indolence under the pretext of difficulty, for we are not very fond of fatigue. It generally happens that professors of eloquence court her for vile purposes and mercenary ends, and not because of her own transcendent worth and matchless beauty. If such go out to plead in public, and to make a penny at the bar, without the acquirements I have recommended, all their gains shall not equal those of a pedling broker, and a common auctioneer shall be better paid for his expence of lungs.

I desire this may be read by none who shall sit down and make an estimate of the expence of time and application. But, give me the reader who figures in his mind the idea of eloquence, all-divine as she is; who, with Euripides, gazes upon her all-subduing charms; who seeks not his reward from the venal fee for his voice; but from that reflection,

tion, that imagination, that perfection of mind, which time cannot destroy, nor fortune affect. Such a man will readily agree with me, that the hours now misemployed at the theatre, upon the parade, in wasteful play and idle conversation (not to mention long meals and late hours), if spent upon music and the mathematics, would give him more real delight than could the whole circle of such illiberal pleasures. For Providence has so much favoured mankind, as to make those arts, that are the most laudable in themselves, the most serviceable to human life. But this pleasing reflection has made me deviate too much. I have now finished what I had to say upon that part of education which is to be given to a young gentleman before he aims at higher attainments. The following book presents the reader with a new subject, and treats of an orator's duties.

QUINCTILIAN'S

QUINCTILIAN'S INSTITUTES

OF

ELOQUENCE.

BOOK II.

CHAP. I.

AT WHAT AGE A YOUNG GENTLEMAN IS TO BE PUT INTO THE HANDS OF THE PROFESSOR OF ELOQUENCE.

A CUSTOM has obtained, and daily prevails, that pupils are always delivered over much later, than in reason they ought, to the Latin professors of eloquence, and consequently to the Greek. The reason for this is two-fold; first, because teachers of eloquence have given up part of their profession; secondly, because the grammarians have laid hold upon what, properly, is none of their's. For the former think themselves obliged only to declaim, and to teach the principles and practice of declamation; and that, too, they confine to matters of debate and decision in the courts of law. As to other attainments, they despise them, as being too despicable for their profession. Meanwhile, the grammarians, not contented with doing us the favour, as they call it, to teach the part which the others had abandoned, carry their encroachments so far as to break into the pathetic and persuasive, which call for all the powers of eloquence to sustain them. The

The consequence of this practice is, that the one professor now finishes that part of education at which the other formerly began; and the pupil, at an age which ought to be employed in higher attainments, is drudging in the lower forms, and learning rhetoric from a grammarian. Thus it happens very ridiculously, that the young gentleman, at the time when he ought to be master of the art of declaiming, goes to learn it.

Let us now settle the real boundaries of both professions: and let grammar (which in Latin they have translated to be literature) know her own original limits, especially as she has made such advances from the meanness of her original appellation. For that which, near the source, was no more than a rill, now foams along in a widened channel, by the accession of poetic and historic streams; and from being confined to the narrow study of speaking with propriety, she now engrosses the circle of almost all, even the most exalted, arts: while rhetoric, though she takes her name from the powers of eloquence, never reclaims her own property, and has no ambition to repossess herself of a painful study, though it properly belongs to herself; and thus, by giving way to her indolence, she is almost driven out of her territory. I shall not however deny, that sometimes a professor of grammar may make such advances in the art of rhetoric as to be qualified to teach it; but, in that case, he will not act in the capacity of a grammarian, but of a rhetorician.

It is likewise my purpose to inquire, at what time a boy is ripe for studying the rules of rhetoric; in which inquiry we are not to be directed so much by the consideration of the pupil's age, as of his proficiency. Now, not to be longer upon this question, I think the time for entering a boy upon rhetoric is

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as early as he is capable of that study; but that time is determined by the consideration I suggested before. For if he is suffered to continue in the grammarian's hands till he learns the arts of reasoning (which are the rudiments of eloquence), then he needs not to enter with the rhetorician so early. Now, if the rhetorician does not disdain to teach the ground-work of his business, he will immediately initiate his pupil in the method of stating a case, and set him little exercises, both of praising and inveighing. Are we ignorant that the ancient teachers of rhetoric, in order to improve eloquence, employed those kinds of exercises, defended propositions, spoke from general topics, and touched upon every circumstance of time, place, and person, that could serve as matter for debate upon causes, whether real or imaginary? From this it appears how scandalously the professors of rhetoric have abandoned the province which was its earliest, and long undisputed, possession. Can it be proved that any one of the exercises I have mentioned may not essentially belong to the study and practice of rhetoric in general, and does not actually fall under that species of it which is appropriated to the bar? Do we not state cases at the bar? Nay, I am not sure whether it is not the most useful part of a pleader's practice. Has not a pleader frequent occasions to employ panegyric, invective, and general topics; such as those which Cicero composed, and which were levelled against Vice; or such as those that are, in general, applicable to the cause depending, in the nature of those published by Quintus Hortensius? For instance; What degree of evidence amounts to a proof, what evidence is to be believed and what rejected; is not, I say, all this practice in speaking essentially necessary to the business of a pleader in a court of law? These are weapons which orators ought always to have in

readiness, to make use of as occasion offers: and whoever shall be of opinion that they are not essential to eloquence, must be absurd enough to deny that the artist has not begun his statue, though he has already moulded all its limbs. Some may blame my hurry in taking the pupil out of the hands of the grammarian, and putting him too early into those of the rhetorician. Why, then, let him even have both masters at the same time; there is no danger of the boy being over-burthened with two teachers. I am not for increasing, but separating, his studies, which may be confounded if he continues only under the grammarian; the pains which each master bestows will be the more successful if confined to his own province of teaching. This is a method of education that still prevails with the Greeks, but is disused by the Latins, and with some shew of reason, if, where one master leaves off, another, be where it will, is always found ready to begin.

CHAP. II.

CONCERNING THE MORALS AND BUSINESS OF A TUTOR.

When a boy, therefore, has arrived at such maturity of judgment, that he is capable to master, what I have mentioned to be, the first principles taught by a rhetorician, he is to be put under the care of a professor of that art. With regard to him, the chief consideration is his morals. The reason why I enlarge upon that consideration in this part of my work, is not that I think the morals of the most interior masters are not to be accurately examined, (for I declare myself in the first book to be of another opinion) but because the age of the pupils ren-

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ders this the most proper place for mentioning this matter. Boys are delivered over to the professors of rhetoric, under whom they continue for some time after they come to be young men: the attention of a master, therefore, ought to be the greater. His virtue ought to protect the weak from injury; and his authority ought to deter the wild from licentiousness. The greatest purity of example is not sufficient in a master, unless he can put the morals and behaviour of his scholars under an absolute submission to his discipline.

Let the master, above all things, therefore, bear towards his scholars the affection of a parent, and look upon himself as succeeding to the place of those who have delivered them over to his care. Let him neither practise nor tolerate vice. Let his discipline be without asperity, and his indulgence without cheapness; thus he will secure their affections, and avoid their contempt. Let the frequent subject of his conversation be concerning what is laudable and what is virtuous; for the oftner he admonishes, the seldomer he will be obliged to punish. Though far from being passionate, yet he is not to dissemble whatever requires amendment. Let him be plain in teaching, patient of labour, and punctual rather than precise. Let him readily answer the inquisitive, and of himself examine those who are otherwise. In commending the exercises of his pupils, he ought neither to be niggardly nor lavish, because the first begets disgust, the other negligence. In correcting what is amiss, he ought not to be ill-natured, but far less ill-mannered. For many young gentlemen are driven from their studies by their masters reproaching them as if they hated them. A master every day ought to tell his pupils somewhat which they are to carry home with them. For, though reading furnishes abundance of examples for imitation, yet we receive

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fuller satisfaction from, what I may call, the living voice, especially of a master who, by skilfully educating his scholars, attracts at once their love and esteem. For it is almost impossible to express with what pleasure we imitate the man we love.

I am entirely against the common practice of young gentlemen starting up and making a noise when they applaud a thing. Even the more advanced amongst them ought to be modest in approving what they hear. The younger pupil will thereby depend upon his master's judgment, and will think every thing he says to be right, if it meets with his approbation. As to that much-mistaken piece of good-breeding, as it is called, of applauding one another's compositions, be what they will, it is not only unbecoming, and theatrical, and foreign to the discipline of a school, but it is absolutely destructive of learning itself. For if, while they are speaking, every thing that comes uppermost is sure to meet with applause, they will think they have no occasion to be at the expence of study and application. The hearers, therefore, as well as the speaker, ought to consult the master's countenance for what they are to approve or blame in a composition; and thus the scholar will at once acquire a propriety of diction, and a justness of discernment. The present practice, however, is, for scholars to be eager and ready upon every little turn of a period, not only to rise up, but to run about and clap it with most unseemly applause. The compliment is repaid in its turn and upon this, the merit and success of a composition now depends. The consequence is, false pride and empty self-conceit; insomuch that while the scholars are so excessive in their applauses, they are apt to be prepossessed against the master's judgment, if he be but only moderate in his approbation. But masters themselves should desire

that their scholars hear them with attention and modesty; for the master is not in speaking to court their approbation, but they his. If it be possible, however, let him narrowly observe what each scholar is touched with, and in what manner it affects him, and he will have reason, not more upon his own than upon their account, to be pleased with every instance of their praising with discernment and justice.

I am against boys sitting promiscuously with young men. For though a man, such as we suppose him to be who has the charge of the studies and morals of youth, is capable to keep the most advanced of his pupils under proper regulations, yet I am even for separating the weakly from the robust; and thereby guarding not only against the commission, but the suspicion, of a criminal intercourse. This, I think, proper to be just hinted at. For I think it needless to recommend that both master and pupils should be void of actual guilt. But if any father is not careful to avoid chusing a man of avowed profligacy to instruct his son, I am here to inform him, that all the rules I have now laid down for the benefit of young gentlemen, can be of no manner of service to him.

CHAP. III.

WHETHER THE SCHOLAR IS TO BE IMMEDIATELY PUT UNDER THE CARE OF THE MOST EXCELLENT MASTER THAT CAN BE FOUND.

Neither must I omit touching upon the opinion of some, who admit that a boy may be fit to be entered upon the study of rhetoric, and yet that it is improper to put him immediately under the care of

the most eminent professor; but that he should apply for some time under those of an inferior rank: as if, in forming a boy to learning, a master of middling parts is most eligible; being more easy to be understood and imitated, as well as less impatient in removing the knotty parts of the elements of knowledge.

Now, I think it will not cost much pains to shew the great importance of giving a child the earliest tincture of whatever is most excellent in its kind, and the very great difficulty there is in discharging a wrong habit when once it has taken possession. For the master who succeeds has a double task, that of unlearning their pupils what they learnt before; a matter of more difficulty than that of instructing him anew. For this reason, Timotheus, an eminent master of music, is said to have required from the scholars who had begun to be instructed by another master, fees double what they paid who entered first with him.

There is, however, a twofold mistake in this matter. In the first place, they think an indifferent master may do very well for young beginners; a vulgar and a gross mistake! But this neglect, however blameful, would be more tolerable, did such schoolmasters only teach less, and not worse, than others do. There is another mistake which is still more general; that a man of eloquence will not descend into every minuteness of teaching, and that this proceeds either from their disdaining to comply with so inferior a practice, or from their being utterly incapable to do it. For my part I exclude from the rank of professors, every man who shall think this practice beneath his attention; and I affirm, that the abler a master is, he is the more capable to descend to it. In the first place, because we must suppose the man who excels in eloquence, to have most accurately attended

attended to all the means of acquiring it. In the next place, method is of great efficacy in instructing, and the best master always practices the best method. In the last place, because no man, who is eminent in great matters, can be supposed to be deficient in small ones; unless we can imagine that a Phidias, after finishing a masterly statue of Jupiter, may find himself outdone by another, in every thing that relates to its ornaments; or, that an orator cannot keep up a common conversation; or, that an accomplished physician knows not how to cure the slightest diseases.

But it may be said has not eloquence properties that far surpass the measure of a boy's understanding? Who doubts but it has? But I am to suppose the professor of eloquence to be, at the same time, a man of sense and of practice in teaching, and one who knows how to adapt himself to a boy's capacity. Thus, were a man, who walks very fast, to set out on the same road with a child, he would lend him his hand, and, relaxing his pace, go no faster than the child could follow. But it generally happens, that the lessons of the most skilful masters are the most intelligible, and the most perspicuous; for perspicuity is the chief property of eloquence, and, the poorer a man's capacity is, the more he endeavours to recommend himself by stretching and racking it; as we see short people raise themselves on their tiptoes, and cowards talk in a blustering manner. For I hold it to be an absolute certainty that a stile, swelling, incorrect, jingling, or infected with any of the faults that proceed from injudicious imitation, is vitiated, not through the exuberance, but the want, of power: In like manner, as bodies are puffed up, not by health, but by disease: and we commonly lose our way when we strike out of the plain rode. Upon the whole, therefore, the

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worse speaker a man is, he is always the less intelligible.

I am very sensible, that in the foregoing book, when I preferred a public to a private education, I said that children, in their first efforts and advances towards learning, had a pleasure in conforming themselves to the manners of their fellows, because they are most natural to them; and some may think that opinion to be inconsistent with what I have recommended; but the case is far otherwise; for one of the reasons that can be brought for putting a gentleman, at first, under the care of the most excellent professor, is, because such a master, being best able to instruct his pupils, either his manner of speaking is most proper for imitation, or, if they mistake, they are instantly set right; while an insufficient master is apt to encourage them in what is faulty, and he forces his whole school to follow his wretched opinion. Therefore, the man ought to excel in eloquence, as well as in morals, who undertakes this profession, and, like Homer's phœnix, he ought to instruct his pupil how to act, as well as how to speak.

CHAP. IV.

CHAP. IV.

UPON THE EXERCISES TO BE PRACTISED BY A YOUNG GENTLEMAN, WHILE HE IS TRAINING UP TO ELOQUENCE.

First, Stating of Facts.—Exuberance in Youth praised.—Their Compositions ought not to be corrected with too much Severity.—That they ought to be taught to write as correct as possible.—Secondly, The Manner of laying down and refuting the Facts of a Case.—Thirdly, Concerning Praise and Reproach.—Fourthly, General Topics.—A Dissuasive from the Practice of keeping common Topics at Home ready drawn out, to be made Use of as Occasion shall serve.—Fifthly, The Advantages and Disadvantages of Law.

I AM now to proceed to mention the first exercises which I would recommend to the young student of eloquence; without immediately proceeding to, what is commonly termed, the art of rhetoric. In my opinion, then, he ought to begin with that kind of exercise that bears the greatest resemblance to what he has learned under the professor of grammar. Now, we have three kinds of narrative besides that used in pleadings. The fabulous, upon which tragedies and poems are founded, and which is not only remote from truth, but from its very appearance. The argumentative, such as is made use of in comedies, and which, though not true, has the resemblance of truth. The historic, or the stating a matter of fact. With regard to the two first, we have given them up to grammarians; the professor of rhetoric, therefore, is to enter his pupil upon the historical narrative, which, the truer it is, is the stronger.

I shall leave, however, the discussion of what I take to be the best method of stating a fact till I come to treat of the judiciary part. It is here sufficient for me to hint that there is no occasion to bestow

stow so much application to study, if facts are to appear naked and unadorned with language. A narrative, therefore, ought not to be bald and jejune, nor on the contrary ought it to be complicated and flourished with descriptions that are foreign to the matter, and generally spun out with poetical licence. Both extremes are faulty, but the faults proceeding from the poverty, are worse than what proceed from the exuberance of expression; for a style of language, perfectly correct, is neither to be required nor expected from boys. But I prefer the genius that is brisk, and daring in its attempts, and the spirit that sometimes exceeds in its effects; never shall I find fault with a scholar for a luxuriancy of parts. I even recommend it to teachers to take particular care that they imitate the indulgence of nurses in nourishing the tender mind, and that they fill it with the milk, as I may call it, of agreeable literature. This will give them a plumpness in their younger years, which in their more advanced age will be knit and confirmed with strength and sinews. For when a child has all his limbs duly proportioned in his infancy, it portends leanness and weakness to his manhood. At this age, permit him to be a little extravagant, to employ a little invention, to be proud of what he invents, even though it may not be quite regular and correct. Fertility is easily cultivated; but no art can cure barrenness. I have no great opinion of a boy's future genius, when exactness is the only standard by which we can measure it. I love to see the first materials disclose themselves in great abundance, nay, with profusion. Much will be mellowed down by years, much will be polished away by reflection, and somewhat will wear out by experience itself; supposing still, however, that there is sufficient matter for pruning and lopping away; but there still will, provided we do not, at the beginning, hammer

hammer out the plate so thin, that it will not take the impression of the graver. Whoever consults what Cicero says upon this head, will not be surprised that I am of these sentiments; I love, says he, a superfetation in youth. I would have something in youth that I can lop away. Therefore, above all things, we ought to avoid chusing, especially for boys, a tasteless master, as much as we would a parched, sapless soil for young shoots. They who never dare raise their sentiments above what they hear in common conversation, immediately prove mere dwarfs and reptiles. To such, leanness supplies the place of health, and impotence, of judgment; and while they think it is sufficient to be without vice, they possess the vice of being without any virtue. Therefore, with me, maturity itself may come on too fast. I am not for having liquor grow mellow while it is in the vat; I love to have it, as it grows old, reserve its strength, and improve its flavour. I am now to put in another caution, that should be attended to, which is, that a boy's capacity may be dulled by too great strictness in correcting him. This, at first, gives him despondency, then pain, and at last aversion for study, and, which is worst of all, when he is afraid of every thing, he attempts nothing; for, with his spirit, he loses all his power. There is not a clown but knows how dangerous it is to apply the pruning knife to tender shoots, before they can bear to be lopped, or suffer an incision. A master ought, therefore, to render himself agreeable; so as to soften and palliate what nature has made rough and unpleasing. He ought to praise one passage, to bear with another, to give his reasons why a third should be altered, and to illustrate a fourth, by adding somewhat of his own. Sometimes it may be proper for him to dictate the whole exercise, that, while the young gentleman is imitating it, he may fall in

love

love with it, as if it was his own performance When I found a boy, whose composition was too faulty to admit of being corrected, I have found it of service to order him to write over the same subject anew, after I had given him a fresh explanation of it; telling him, at the same time, that it was in his power to do it much better; for nothing enlivens a boy to study, more than hopes of success. Different ages, however, require different means of amendment, and the task that is to be either composed or corrected, should be proportioned to the pupil's abilities.

When I have seen the composition of a boy a little extravagant or flighty, I have told him, it was very well at his years, but that the time would come when I would not show him any such indulgence. Thereby, I encouraged his genius, without imposing upon his understanding. But to return from this digression; I am for having narratives composed with all possible accuracy. For I think it of service to a boy's language, when he begins to learn to speak, to repeat what he hears; and it may be right, while he is explaining any thing, to make him repeat from the beginning to the end, or from the middle, sometimes one part, sometimes another. But this is an exercise to be imposed upon boys only while they are very young, and while they can do nothing else; for when they are just beginning to connect their ideas with words, it serves to strengthen their memory: when they learn to form and to polish their style, an off-hand prating, random flights and sudden starts, are ridiculously ostentatious, and only fit to amuse the gaping crowd. Such exercises give a false pleasure to the thoughtless parent; to the boy, a contempt of application, a shameless front, a wretched habit of speaking, a promptitude in mischief, and that insolence of self-conceit

self-conceit which is often fatal to the most promising advances in learning.

There is a certain time for acquiring a quickness and volubility of speech; and I shall treat of it in its proper place. At the age I speak of, it is sufficient, if the pupil is attentive to what he is about, if he bestows all the application his years can admit of in composing somewhat that is tolerable; let him persevere in this practice, and habit will soon become second nature. The man who learns to speak properly before he learns to speak quickly, will in time prove to be the man, or very near the man, whom I here want to form into a complete orator.

It is proper for a student, after he has applied to the composition of narratives, to proceed to the practice of establishing and refuting them, which, by the Greeks, is called ἀναίρεση καὶ κατάσεση. This exercise may be of use not only in fabulous and poetical subjects, but even with regard to the monuments of our own history: if we are to examine, for instance, into the credibility of that passage, where we are told that a crow came and sat upon the head of Valerius, while he was fighting, and struck with his bill and wings at the eyes and the face of the Gaul his enemy, what a field of disputation is here opened on both sides of the question! We may say the same of the serpent which is said to have engendered Scipio, the wolf of Romulus, and the Ægeria of Numa. As to Greek histories, they are filled with facts as bold as the licences of the poets. We are likewise very often in doubt with regard to the time and place of an event, sometimes with regard to a person, (as Livy often is), and one historian is perpetually contradicting another.

But our young gentleman begins now to aim at higher matters, to praise the eminent, and to lash the guilty; an exercise attended with many advantages.

vantages. For the genius is thereby employed with a multiplicity and variety of matter, and the mind is formed to know the difference between good and evil, besides acquiring an extensive acquaintance with men and things: while, at the same time, it is furnishing itself with a variety of examples, which is of the most decisive influence in all kinds of causes, to be made use of as occasion shall serve. To this study succeeds that of drawing parallels between two subjects, which is the better, which the worse man: and though this exercise is built upon the same principle with the former, yet it unites both manners, and examines not only the nature, but the degrees of virtues and vices. We shall, however, speak in the proper place upon the subject of praising, and dispraising, as it forms a third part of rhetoric.

As to general topics, I mean such as we do not use to point at the person, but the vice; for instance, against an adulterer, a gamester, or a rake; they fall in with the chief purposes of pleading, and by only naming the party, they are immediately formed into impeachments. Nay, sometimes without naming the party, he may be so characterised as to be known: as when we say, for instance, the blind adulterer, the needy gamester, or the old, profligate, fellow. We may likewise sometimes form general topics into defences. For we may have occasion to plead in favour of love or luxury, and to defend the cause of a pimp or a parasite: but so as to make the best of the cause, without patronising the vice.

As to propositions which arise from comparison, for instance, Which is preferable, a town, or a country life? Which has most merit, the gown or the sword? The opportunities they afford for the practice and improvement of eloquence are wonderfully beautiful

beautiful and copious: whether we consider them as greatly contributing to the business of persuasion, or the issue of a trial. Nay, we see that Cicero, in his oration for Muræna, has spoken very fully upon the topic I last mentioned. We have other topics that are almost entirely of the deliberative kind; such as, Whether we ought to enter into matrimony? Whether we ought to hunt after preferment? For we need but to name the parties, and they become proper subjects for pleading,

My masters used to afford us a very profitable, and, at the same time, to us a very agreeable, entertainment, by fitting us to speak upon matters of conjecture; for instance, when they ordered us to examine and discuss such a question, as, why the statue of Venus had armour on amongst the Lacedæmonians? or, why is Cupid represented under the figure of a boy, furnished with wings, arrows, and a torch? And the like: in all such exercises, we enquired into the meaning of the thing, a practice that very often occurs in pleadings, and may be ranked amongst the Chriæ.

As to topics relating to witnesses, whether we are always to believe them? or to evidence; for instance, whether we are to be determined even by a slender proof? They so incontestibly fall in with the practice of the bar, that some pleaders, of distinguished rank in the government, have been known to write them out, to get them exactly by heart, to have them in readiness, so as to be able at proper times to hang them out as occasional ornaments, when they speak off-hand. This is a practice, I will venture to say it, (for I can no longer conceal my sentiments on this head), that betrays the greatest insufficiency of abilities. For what figure must such a man make at the bar, where every day presents a new

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and a different subject of pleading? How shall he invent somewhat of his own to say, to obviate the different objections that are brought? Can a man be quick in his replies, can he be accurate in examining witnesses, when he is obliged to have recourse to a set, premeditated form of words, to express himself upon the most common occasion, and in matters that so frequently occur at the bar? Such men, when they are to repeat the same sentiments upon different occasions in a court of justice, like the remnants of cold meat, create a loathing in the audience; for he himself must blush, like the owner of tawdry apparel, the sight of which becomes common by being so often exposed to the eyes of the public, and is worn out, as is the case with beggars who want to make a show, by employing them upon many and different occasions. Besides, there can scarce be a topic so common as to admit being adapted to every cause, unless fitted to it by a peculiar set of words, proper for the subject, so that the application may appear natural and not forced; otherwise, it will not be of a piece with the rest of the pleading, and the whole has generally an air of impropriety by being introduced, not because it is necessary, but because it is ready. Thus, some make a digression into the most copious topics, merely for the sake of introducing a sparkling sentiment, whereas every sentiment ought to arise from the subject. In like manner, all the particulars I have recommended are no farther either beautiful or profitable than as they naturally arise in the course of the pleading. I will farther observe, that let a set of words be ever so beautiful, unless they tend directly to the purpose of persuasion, they always appear idle, and, sometimes, inconsistent. But it is time to finish this digression.

The

* The establishing or weakening the force of a law, requires almost the whole of an orator's abilities. Whether this is an exercise that belongs most properly to the pathetic or the argumentative part of rhetoric, depends upon the customs and constitutions of different states; for, amongst the Greeks, the enactor of a law might be summoned to appear before a judge; while the custom amongst the Romans was to plead for and against a law before an assembly of the people. Both manners are comprised in a few, and those almost certain rules. For law is of three kinds; SACRED, PUBLIC, and PRIVATE. This division has more dignity if it is laid down so as to grow upon us; that it is a law, that it is a public law, that it is a law enacted for the service of the gods. As to the matter to be debated, it is in every body's hands. For either the question must relate to the insufficiency of the person who brings in the law; for instance, Publius Clodius, whose authority was disputed, because he was not created a tribune in a proper manner. A speaker may even arraign a law for not passing in the necessary forms. And here he has a copious field; either that it has not been promulgated for three market-days; that it did not pass upon a proper day; that it was carried through against the protest of a magistrate, who had a right to impose a negative upon it; or against the auspices; or that it wanted some other necessary form to give it the sanction of a law; or that it clashes with some other law in force. But such exercises do not fall into the early part of education I now treat of; because they stand uncon-

* Monsieur Rollin has omitted, in his edition, the whole of this beautiful chapter, from this passage to the last paragraph; his reasons for it are obvious, viz. because it could be of no service to the practise of a French orator, either at the bar or from the pulpit, but I have carefully preserved it for the use of the british reader, to whom alone it can be serviceable.

nected with particular persons, times, and causes. In all other respects, they are generally treated in the same manner, whether the dispute be real or fictitious. For a law must be faulty either in words or matter: with regard to words, we are to examine whether they are sufficiently expressive, and whether they do not contain some ambiguity? With regard to matter, we examine whether the law is consistent with itself; whether it affects the public or only private persons? But one main consideration is, whether it conduces to virtue, or to public utility only? I am sensible that this consideration is generally split into many parts. But I rank under the name of virtue, whatever is just, pious, religious, and the like. The term just, however, admits of various discussions. For we are either to consider a fact as being worthy of punishment or reward; or the measure of that punishment or reward, which may be blameable either by being too great, or too little. As to public utility, it is to be determined either by the nature or the expediency of the measure, which may depend upon the circumstances of a conjuncture. Sometimes the practicability of a law is a main object of consideration. It is likewise proper to know, that of some laws the whole is blameable, and of others only a part; and we have examples of both kinds in the compositions of the most famous orators. I am likewise sensible that some laws are only temporary, and relate to the conferring public power and honours; such was the Manilian law, which Cicero recommends in a speech. But I forbear to lay down any rules upon this subject at present; for they must arise from particular circumstances, and not from any general principle.

Such were the subjects that commonly employed the eloquence of our antient orators, but they borrowed their method of reasoning from the art of logic.

logic. For it is pretty plain that the Greeks did not, till about the time of Demetrius Phalereus, handle supposititious cases in the same manner as if they were to be debated at the bar or the council-board. I have already confessed myself, in another book, to be ignorant whether he invented those kinds of exercises; they who are very positive that he did, are by no means well founded in their authority. Cicero himself, however, tells us that Latin professors began first to practise a little before the death of Lucius Crassus; of which professors, Plotius was the most remarkable.

CHAP. V.

CONCERNING READING THE WORKS OF ORATORS AND HISTORIANS UNDER A PROFESSOR OF RHETORIC

That a Professor of Rhetoric ought to instruct his Pupils in the Works of Historians and Orators, and point out the Beauties and Blemishes of both.—That sometimes he is to read incorrect Orations.—That he is frequently to examine them.—The very great Advantages attending such Exercises.

I SHALL soon have occasion to touch upon the method of declaiming; meanwhile, as I now am treating only on the rudiments of rhetoric, it is proper I should here lay down a method by which the pupil will reap great advantages. We have seen that grammarians require their scholars to explain the works of the poets; in like manner let the professor of rhetoric instruct his pupils in the reading of history, and, above all, of orations. This is a practice which I went into with a few of my scholars, whose age seemed to require it, and whose parents thought it serviceable to their education. But in the main, though I was fully apprised of the utility of this method, yet I was under two difficulties; In

In the first place, long habit had established quite a different method of teaching: and young gentlemen when they came to be a little advanced, not being fond of that trouble, followed the examples that were set them by me, without having recourse to originals. Now, though I was late in finding out the method I have laid down, yet I am not at all ashamed to recommend it for the future. I am very sensible that it now prevails amongst the Greek professors, but they leave it chiefly to their assistants because they think it would take up too much of their time, were they themselves to prelect, and their scholars, after them, to explain, those authors. And, to say the truth, that kind of prelection which consists in instructing boys to read with freedom and exactness, and even that which is employed in explaining the meaning of every word that is a little uncommon, is very unsuitable to the business of a professor of rhetoric. But the man who undertakes that province, is fulfilling the duties of his profession and his character, while he is pointing out beauties, and sometimes blemishes, in compositions. And the more so, because I do not mean that a professor should be obliged to attend every one of his scholars, as he would do little boys, in reading every book which each of them may fancy. For to me it seems the easiest as well as the most profitable method for the professor to enjoin silence, and to appoint one student to read (who is to take it in his turn), that the others may apply to the obtaining a just and clear pronunciation. Then after explaining the occasion upon which the oration is composed (for, by that means, what the master says will be the more clearly understood), he is to suffer nothing to pass unnoticed; but to remark every property both of invention and expression. He is to point out the orator's art at his setting out in conciliating the affections of the judges; his perspicuity

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in stating facts; his conciseness, his exactness; how full of meaning in one period, of cunning in another, and how artful through all; for the whole art of his profession consists in disguising art so as none but an artist can find it out. The master is then to observe with what skill the orator divides his subject; how subtile, how quick he is, in reasoning; with what power he inspirits, with what softness he sooths; his invectives how keen, his wit how delicate; what command he has over the affections, how he breaks into the passions, and how he moulds the minds of his judges to every purpose of his pleading. With regard to elocution, he is to point out every property, ornament, and sublimity of expression; where it was needful to amplify, and where to extenuate; where a metaphor is beautiful; where a figure is just; and where the orator has, in his composition, united strength with smoothness, and what is flowing with what is manly.

It likewise may be of service to give boys public lectures upon orations that, in themselves, are of a corrupted, faulty composition, and yet, through the prevalence of bad taste, are generally admired. Here the professor will have an opportunity to show his pupils, how they are filled with passages improper, obscure, swelling, creeping, mean, affected, and effeminate; and yet those passages not only meet with a general admiration, but, what is worse, their very faults beget that admiration. For a discourse that flows in a plain natural, manner, seems to denote no genius; while we are apt to admire, as something very curious, whatever is out of the common road. In like manner some people put a greater value upon figures that are distorted, and in some respect monstrous, than they do upon those who have lost none of the common beauties of nature. Others are fond of mere appearances; they love the man

man who plucks his hairs out by the root to make his face smooth, who applies the curling-iron to his locks, who buys his complexion; they think that, in such a figure, there is more beauty, than in all that can be bestowed by uncorrupted nature; as if the comeliness of the person arose from the depravity of the mind.

The professor ought not only to inculcate these truths, but he ought frequently to examine his pupils, and to make trial of their capacities. Thus, they never will be off their guard, nor will his rules slip through their memories, while at the same time, they are still tending to the main point, that of being able to invert and judge for themselves. For what other purpose has teaching, than that a pupil may at last be under no necessity of being taught?

I will be bold enough to say, that an exact observance of the exercises I now recommend will be of more service to scholars than all the arts of teaching ever yet invented, though, no doubt, they are very serviceable. But how is it possible, in so extensive a system, to touch upon every different circumstance that daily occurs? Thus, though the military art is laid down in certain general rules, yet a soldier receives the most instruction when he learns upon what account, in what situation, and at what emergency, those rules have been applied with judgment by great generals. For, in almost every art, experience is more serviceable than precepts. Supposing a master is to give to his scholars a specimen of his eloquence, which is to serve them as a model for their's; can we think they will not receive more benefit by reading Cicero and Demosthenes? The common practice is, to set a young gentleman right where he is wrong in his rhetorical exercises. But will it not be more serviceable, nay more pleasing, for him to correct the compositions of another?

For

For every man chuses to have another person found fault with rather than himself. I could enlarge greatly upon this subject, did I not think the truth of my observations self-evident, and I wish they were put in practice with as much pleasure, as they may with profit. Could I succeed in this, I should find no great difficulty in determining the question, what authors a young gentleman is first to read.

CHAP. VI.

CONCERNING THE AUTHORS THAT ARE TO BE FIRST READ BY A STUDENT.

That he is to begin with reading the best Authors.—A Caution against his too implicitly following either the Ancients or the Moderns.

Some have recommended those of the least eminency, because they seem easiest to be understood. Some have recommended authors of a more ornamented kind, as being best adapted to inform the dawning genius. For my part, I am of opinion that they ought to begin with, and continue in reading, the very best authors, and out of them I would have them chuse the most intelligible and the most explicit. Thus, I recommend Livy, rather than Sallust, to a boy: the former is more copious, though a student before he can understand him, must make some progress in learning. Cicero, in my opinion, will both please and inform the young beginner; for as Livy observes, in proportion as the student resembles Cicero, he will receive delight, as well as benefit from his works.

There are, in my opinion, two manners, which, in education, ought to be chiefly guarded against. The first is, that a master be not so great an admirer of antiquity

antiquity as to bring a young gentleman to contract a habit of imitating the stile of the Gracchi, Cato, and other old authors. For his compositions, thereby, must become uncouth and unpleasing. For being yet incapable to judge of their energy, he will form himself upon their style, which, though in their days, it doubtless was very beautiful, is disagreeable in ours, and, what is worst of all, they will fancy that they resemble those great men, though they do it only in their defects.

Another, and an opposite extreme is to be guarded against; for a master ought to take care lest his scholars, captivated by the flourishes of modern affectation, be enticed into so bad a taste as to become fond of that luscious manner, which, the more puerile it is, is the more agreeable to the capacities of boys. After, however, a young gentleman's taste is formed, and when there is no danger of its being debauched, I advise him to read both the ancients and the moderns: if he borrows from the former, manliness of sentiment, and solidity of understanding, but cleared from the rust of those rude times, they will appear to much more advantage in our modern dress; for the moderns too have great merits. Nature has not curst us with any dullness of apprehension, but we have deviated from the ancient manner of expression, and indulged ourselves too much in softness and smoothness so that we fall short of the ancients, not so much in genius as in manner. There is great variety of beauty for our choice, but we are to take care that it be not contaminated by being mixed with what is otherwise. I am, however, ready not only to acknowledge, but to maintain, that not only former ages, but the present, have furnished us with writers, who may serve as perfect models of imitation in every part of their compositions. But few there are who who can point those

those writers out. It is safer for a young gentleman to imitate the ancients, even though he should do it injudiciously; for I am against his beginning with the moderns, lest before he knows their beauties, he should imitate their defects.

CHAP. VII.

THAT BOYS ARE TO LEARN BY HEART SELECT PASSAGES FROM ORATORS AND HISTORIANS, BUT SELDOM ANY THING OF THEIR OWN COMPOSING.

Upon this head there has been a difference in the practice of professors. Some of them, after setting their pupils a subject, to which they were to speak, not only instructed them in the manner of dividing it, but proceeded to cloath it in proper expressions, and to handle it not only problematically, but pathetically. Others, after drawing the first outlines of a subject, afterwards handled those parts of it, which each scholar had omitted, and touched some topics with as masterly a hand as if they had been to exhibit them to the public as their own.

As both those manners are improving, I am not, therefore, for separating the one from the other. But, if we were confined to follow one of them only, I think it is more instructive for pupils to be put in the right road at first, than to be brought back after they have gone astray. In the first place, because they do no more than barely attend to the corrections made in their pieces; but when they are, at first, instructed in the proper manner of dividing them, they know better how to execute, as well as how to judge. In the next place, a young gentleman bears better with instruction than with reproof. In our present method of education, some are so quick and so touchy, as to disdain admonition, and to conceive a secret

a secret aversion to it. Not that, for this reason, they are not to be roundly told of their faults, for the master is to have a regard for the rest of his scholars, who presume that every passage is faultless, that is not corrected by him. Now I am for mixing both methods of instruction, and applying them as occasion shall serve. To young beginners, I am for giving a slight sketch of a theme, suited to their different capacities. After they have sufficiently employed themselves upon this exercise, I am for marking out certain lines which they are to follow; and by which they shall be enabled, by the strength of their own genius, to make a farther progress, without any other assistance. For it is proper sometimes to leave them to themselves, lest, by contracting a bad habit of always following the composition of another, they make no attempts or efforts of their own. Now, if they appear to be tolerable judges of what is proper to be said, the master is almost at the end of his labour; but should they still continue to mistake, he must set them right. We observe somewhat of the same kind in birds, who feed their unfledged young ones with nourishment from their own bills; but no sooner are they feathered, than they show them by degrees how to leave their nests, and to flutter round their habitation; but when they are full grown in strength, they leave them to trust to their own abilities, and to range through the open regions of the air.

CHAP. VIII.

THAT BOYS ARE TO LEARN BY HEART SELECT PASSAGES FROM ORATORS AND HISTORIANS, BUT SELDOM ANY THING OF THEIR OWN COMPOSING.

I AM entirely for discontinuing the custom which obliges boys of the age I now treat of to get by heart

all they write, and to repeat it at a certain time. This practice is chiefly encouraged by parents, who imagine that their children are more advanced in their studies, the more they practise such repetitions; seeing the more diligent they are, the more they must improve. Now, I am a great friend to boys bestowing a great deal of time in composing, which I admit to be one of the chief parts of education; but, at the same time, I am strongly of opinion, that what they get by heart ought to be select passages from orations and histories, or some works that are worthy of their attention. For the memory is more intensely employed in becoming master of what is another's, than what is one's own. And whoever has had experience of this laborious exercise, will more naturally, and more easily, fix in his memory his own compositions. Provided boys are early accustomed to compose after the best models, they will always have within themselves a proper subject for imitation; nay, without study or design, their expression will fall into that kind of style which has made the deepest impression upon their minds. They never will be at a loss for plenty of the best terms, the manner of composing, and propriety of figures, which they need not hunt for, because they will naturally present themselves as from a magazine treasured up in their own minds. Add to this, they will be furnished with a store of remarkable sayings, which, in discourse, is agreeable, and in pleading serviceable. For I observe those sayings that are not coined to serve the present purpose of a pleading, have more weight with them, and are attended with more applause, than if they were our own. Young gentlemen, however, ought to be allowed sometimes to repeat their own compositions, that they may enjoy the full extent of reward for their labours, by meeting with that applause

plause which is the chief object of their ambition, But this ought to be suffered only when they have composed somewhat that is polished and correct, for then they will look upon their delivering it to be a reward for their study, which they will take a pride for having deserved.

CHAP. IX.

THAT EVERY YOUNG GENTLEMAN OUGHT TO BE INSTRUCTED ACCORDING TO THE BENT OF HIS GENIUS.

It has generally and deservedly been accounted a great merit in a master to observe the different capacities and dispositions of his pupils, and to know what nature has chiefly fitted them for. For in this respect, the variety is so incredible, that we meet with as many different kinds of capacities as of persons. To prove this, we need only to observe the difference amongst orators themselves, which is so great, that not one of them is like another, so much do they all vary from one another in their manner of speaking; though a great many have, at the same time, applied to some favourite master or other. Most teachers think that the proper way to educate a youth, is to cherish, by instruction, the peculiar talents which nature has given him, and to assist his progress in that walk into which his genius leads him. Thus, one who understands the exercises, when he comes into an academy filled with young gentlemen, after trying every one's abilities both of body and mind, can pronounce what exercise each is fit for. In like manner, a master of eloquence, after a sagacious inspection, can pronounce that such a boy's genius leads him to a close, polished manner of speaking; and others, to a keen, a weighty

a weighty, a smooth, a sharp, a bright, or a witty manner. He will then so adapt himself to every one, as to improve each in that manner for which nature has chiefly fitted him. For nature may be greatly assisted by art; and a young gentleman who set upon a study that is disagreeable to his genius, can never make any considerable advance in that study, and by abandoning the path chalked out by nature, he will make a poorer figure in those studies for which she has designed him. But, as my maxim is to follow reason and experience, preferably to all opinions, however universally established, I must declare that I think this is only true in part. It is indeed absolutely necessary to consult a young gentleman's genius, and to encourage him to strike into that walk of learning for which nature has fitted him. One young gentleman may be fit for the study of history, another for poetry, another for the law, and some perhaps may be fit only to follow the plough. The professor of rhetoric will be as curious in examining all this, as a master of an academy of exercises is in examining what pupil is fit for racing, what for boxing, what for restling, or for any of the other exercises practised at the Olympic or other sacred games. But the youth who is designed for the forum, is not to apply himself to one part only, but to all branches of the art, however difficult the study of them may be; for if nature is sufficient for all this, there can be no manner of occasion for application.

Supposing a young gentleman's genius to be vitiated, as is often the case, that he indulges too turgid and swelling a vein of writing, are we to suffer him to persevere in this; or when it is emaciated and naked, are we not to nourish it, and, as it were, to cloath it? If it is necessary that something should be lopped away from some kinds of genius, is it

it not allowable to supply the defects of others? This is not going against nature. For I am of opinion, that when nature has furnished out any thing good in a genius, we are not to suffer it to perish, but we are to feed and to supply it where it is deficient. Did not Isocrates, whose works prove him to have been as great an orator as his scholars attest him to have been an able master, speaking of Ephorus and Theopompus, pronounce, that the one wanted a rein, and the other a spur? Thereby giving it as his opinion that, by instruction, the slowness of parts in the one, and the too great rapidity in the other, might be mended, and that the two together would make a good mixture.

We are, by all means, to humour a weak genius, so that it may be trained to that purpose for which nature has fitted it; for, by this means, it will succeed the better, if confined to those exercises to which alone it is adapted. But when a superior genius presents itself, a genius that gives well-grounded hopes that it will one day shine in eloquence, we are to bestow upon it all the powers of rhetoric. For though it will have a necessary propensity to one cast of speaking, yet it will enter upon every species, and, by application, it will render what it acquires by study equal to what it inherits from nature. Thus, the master of an academy, that I may pursue the same allusion, if he is to teach a scholar who is to be accomplished in all bodily exercises, will not only teach him to fight with his hands or his heels, how to give a fall, or any particular way of wrestling, or striking, but he will instruct him alike in every part of his exercises.

It is possible that, in some parts, a scholar may be deficient; in that case, let him apply chiefly to what he can succeed in. For two things are always to be avoided; first, you are to attempt nothing that is impossible

possible; secondly, you are not to divert a young gentleman from that part of study in which he can excel, into that part for which he is not fitted by nature. But were we to instruct a genius like that of Nicostratus, that famous champion, whom I remember old when I was young; we are to bestow upon him every power of instruction in every branch of exercise, and make our orator invincible, as he was both in wrestling and boxing, for both which he was crowned victor in one day. Now, how much more is this duty incumbent upon the teacher of a future orator? It is not sufficient that he confines his style to the close, to the delicate, or the spirited manner, no more than a music-master will try to excel in sharp, in mean, or in grave tones only, or in their particular subdivisions. For a speech, like a harp, is never in perfect good order, unless there is a complete good harmony between all its constituent parts, all which ought to be wound up to the same pitch.

CHAP. X.

CONCERNING THE DUTIES OF SCHOLARS.

HAVING thus been pretty full upon the duties of masters, I am now to recommend one thing to scholars, which is, that they be as fond of their masters as of their studies, and that they look upon them as the parents of their minds, though not of their bodies. This affectionate disposition is of infinite service to study; it makes students willing to hear, ready to believe, and ambitious to imitate their masters; and to meet together with joy and chearfulness in the school of learning. When checked they will not be affronted, when commended they will

will be pleased, and each will vie with the other, who shall be the most dear to the master. As the one thinks it his duty to instruct, so the others will thinks it theirs to improve, and that they are of mutual service to each other. Thus as the two sexes are necessary to the formation of a man, and as the ground receives the seed in vain, unless it is duly prepared by culture; so eloquence never can have its effects but by a perfect harmony between the master and the scholar.

CHAP. XI.

THAT THE IMAGINARY SUBJECTS, UPON WHICH YOUNG GENTLEMEN SPEAK, SHOULD, AS MUCH AS POSSIBLE, RESEMBLE THE CAUSES THAT ACTUALLY HAPPEN IN COURTS OF JUSTICE.

THE exercises I have now recommended are far from being inconsiderable, nay, they are constituent parts of more important studies; and a pupil who is well instructed and sufficiently exercised in them, is now almost in a condition to enter upon the deliberative and the judicial parts of pleading. but before I touch upon this subject, I must premise somewhat concerning the method of speaking upon imaginary subjects; a practice, though, of the most modern invention, yet by far of the greatest service, in rhetoric; for it is a practice that comprehends all the different exercises which I have been recommending, and presents us with the most lively resemblance of truth. It is, therefore, so much cultivated, that many think it, of itself, sufficient to form a complete orator. For an uninterrupted speech requires no power of eloquence, that does not fall in with those compositions of suppositious pleadings. It is true, this practice has so degenerated through the

the fault of professors, that the wildness and ignorance of those who speak in this manner will be the chief means of ruining eloquence. But there is a right use to be made of every thing that nature has meant for our good. The imaginary subjects therefore that are given, should, as much as possible, resemble truth; and the pupil, in speaking to them, should form himself all he can to the manner of a real pleader, upon a similar subject. As to cases of magic,* of desolation by pestilence, of oracular responses, of step-dames more unnatural than poets can make them, and a hundred other subjects still more improbable than these, we never find any such in the course of pleading, or the practice of the bar.

Then, it may be said, are we never to suffer young gentlemen to speak upon such extraordinary subjects? Are they never to handle, what we may call, a poetical theme, in order to give a loose to their genius, to sport with their imagination, and to form it, as it were, into reality?† I think it were

* Magic.] Our author's observation here is extremely just, and it has been verified in all periods, that immediately preceded a degeneracy of true taste. The marvellous takes place of the natural, and the romantic of the probable. Seneca, with all his wit and elegance, had, before our author's time, frittered away the native graces of the Latin style. True composition, either in speaking or writing, after that began to be disused, and a false taste for quick, smart sentences, grew in vogue, which not being supported by strength of sentiment, and justness of expression, in a few years introduced strained metaphors, false allusions, and a thousand other deformities of style. In consequence of this taste, the schools of eloquence were over-run with unnatural, improbable subjects, such as those mentioned here by our author, with a very just indignation, and the depravity of the public taste increased so much after his death, that declamations upon some of the subjects he here ridicules, are actually now extant under his name.

† Orig. Quasi in corpus eant.] Commentators tell us, this expression signifies, that they may grow fat. But there is somewhat indelicate in the image, and I think the sense I have given the expression is better adapted both to our author's words and meaning.

better if they did not. But if they must, let the subjects chosen, be great without swelling; let them not be foolish; let them not be such as every man of sense must laugh at. We see our cattle when turned into a plentiful pasture, are cured by being blooded, if they grow too fat, and thereby they return with proper relish to the food that gives them the best nourishment. In like manner, if we are to indulge an orator in this practice, if he finds he has contracted, through it, any gross humours, any corrupt juices, he ought to discharge them, if he wants to continue in health and vigour. If he does not, his bombast, swelling manner, will be discovered every time he begins to plead upon real business.

But whoever is of opinion that this whole practice of declaiming or speaking upon imaginary causes, ought not to be founded upon the same principles as those of real pleading, such a man, I will venture to say it, is ignorant of the reason for which this exercise was introduced. For if it does not fit a pupil for the bar, his manner must resemble that of a player upon the stage, or a patient in a madhouse. To what purpose is he to win the affections of a judge, when no judge is before him; to lay out a case, which every body knows never happened, or to bring evidences of a fact into which none is to examine? All such practice is mere trifling, which is the best that can be said of it. For how ridiculous is it to work ourselves into a passion, to be fired with resentment, or melted with grief, unless we mean by such representations to prepare ourselves for real occasions, and pitched fields of battle?

Ought there then to be no difference between the practice at the bar, and this declamatory manner? seriously speaking, there is none. And I wish that the custom were attended with the making use of the real names of parties, and inventing causes of the most

most perplexed and tedious nature, and that we were less afraid of words that are in daily use, nay, that we intermixed some humour with our declaiming; in all which respects we are novices when we come to the bar, however alert we may be in other things which we have practised in the school. It is true, were a declamation to be pronounced for mere amusement, it ought to be somewhat adapted to please the hearers. For in those speeches which doubtless have some truth for their foundation, but are formed to captivate the ear of the public, such as panegyrics, and the whole demonstrative kind, more flourishes are allowed, and the speaker ought not only to profess, but to display to his hearers, assembled for that purpose, all that art of eloquence which generally ought to be concealed in real pleadings. Declamation, therefore, being the resemblance of a real action and a trial, ought to have as near a likeness to truth as possible; though it admits of some embellishment, as having in it somewhat of the ostentatious manner. Such is the practice of comic authors; for they neither speak in our tone of common conversation, (because if they did, they could not show their art,) neither do they deviate much from nature, for, in that case, they could not be called her imitators; but they embellish the manner of common conversation with certain theatrical graces.

Thus, some improprieties always must attend our speaking upon imaginary subjects, and chiefly because a great many circumstances which we take for granted, are really undetermined; such as the ages, the fortunes, the children and the parents of parties; the strength, the constitution and the manners of cities, and the like. Nay, sometimes we lay the stress of our reasoning upon wrong facts. But of this I shall speak in a proper place. For, though the education

education of an orator is my professed purpose in this work, yet I will transiently touch upon every thing which properly relates to teaching, that they who are studious, may, in no respect, be at a loss for information.

CHAP. XII.

A REFUTATION OF THOSE WHO THINK THAT ELOQUENCE STANDS IN NO NEED OF RULES.

I AM now to enter upon that part of the art, at which they who admit of what I have already laid down generally begin. It is true, in my very entrance, I meet with an opposition from those who think that eloquence has no manner of occasion for such rules. Nay, satisfied with the strength of their own genius, with the common method, and the practice of the schools, they laugh at my exactness. Even some professors of reputation are of the same opinion; for one of them, if I mistake not, being asked what the difference was between a figure and a sentiment, answered, really that he did not know, but if the thing was of any importance, it might be found in his declamation. *Another being asked, whether he used the Theoderean or Apollodorean manner, his answer was, I use my fists, sir. This, it must be acknowledged, was the handsomest evasion he could find for his ignorance. Some, besides, who are happy and eminent through their genius, and have given noble proofs of their

* Another.] Orig. Alias percontanti, Theodoreus, an Apollodoreus esset; Ego, inquit, Parmularius sum. The reader is to observe that Theodorus and Apollodorus were famous professors of rhetoric, and the Parmularii were prize-fighters.

abilities

abilities in declamation, have many who resemble them in their inaccuracies, but few in their genius.

Let such, therefore, value themselves upon the impulse, and upon the force, of their nature; let them tell us, that there is no manner of occasion for any art in stating or proving a matter, that is merely imaginary; and that, in order to bring together a crowded audience, there is occasion for nothing but lofty sentiments, and the more daring they are, the better. You may see such men, without any rational plan of thinking, for several days together, with their eyes fixed upon the cieling, waiting still some bright thought shall dart itself into their brains, or roused by the muttering noise they make, as by a trumpet, twist their bodies into a thousand shapes, not in pronouncing, but in hunting after words.

Some of them, before they fix upon the subject of their harangue, mark out certain stages in it, at which they are sure to show away with somewhat that is very smart and pretty. But after long and deep meditation, being unable to connect their thoughts, they throw up what they begun, and then return to this or the other subject, equally battered and hackneyed about.

Such of them as act most sensibly, bestow their pains, not upon real causes, but upon certain topics, in handling which they have no regard to the mark they ought to aim at, but lay about them at random, with any accidental weapon that first comes to hand. From thence it happens that the whole of their composition being unconnected, and patched up of different materials, cannot hang together; and it resembles a boy's foul book, by being filled with scraps and passages from the most celebrated declamations of others. Meanwhile, their great boast is, that they strike out noble sentiments and excellent

ent things, but have we not known barbarians and slaves do the same? And if that is sufficient, there is no art in eloquence.

CHAP. XIII.

AN ENQUIRY, WHY THEY WHO HAVE HAD THE LEAST EDUCATION, ARE GENERALLY SUPPOSED TO HAVE THE MOST GENIUS.

I READILY acknowledge it to be a general opinion, that the uninstructed seem to speak with most force. But, in the first place, this proceeds from a mistaken notion, that the more artless a thing is, it is the more forcible; that is, it is a greater proof of strength to beat down a door, than to open it; to break a knot than to unloose it; to drag a creature, than to lead it along. In like manner, they esteem a gladiator the bravest, and a boxer the hardiest, when the former, without any guard, rushes upon his antagonist, and the latter, with the full sway of his body, flings himself out to fasten upon his enemy; though in fact, the one is often laid sprawling upon the ground through his own fury, and the violent attack of the other parried by a very slight motion in his adversary's wrist.

But, in this respect, the unskilful are imposed upon by certain appearances. For the vast advantages that method gives to pleading, diminishes the show of genius. What is rude seems most bulky; and parts, when scattered, appear more numerous than when put in order. There is, besides, a strong resemblance between certain vices and virtues; railing is mistaking for freedom of speech, rashness for courage, and profusion for generosity. Now, an ignorant pleader is the most liberal of railing, and most frequent in the exercise of it, generally

generally to the great danger of his client and himself. This practice likewise brings a pleader into request, because people are generally fond to hear those things that they would not say themselves.

Such a pleader is likewise less cautious in shunning, and more desperate in tempting the dangers that lie in framing the very expression of his speech. Thence it sometimes happens that the man who is always grasping after what is too much, catches somewhat what is great. But this seldom happens, and when it does, it does not counterbalance other blemishes.

For alike reason, the irregular pleader seems to have the greatest flow of words, because he pours forth all he knows, whereas the regular both chuses and arranges his expressions.

Add to this, that the irregular pleader generally rambles from his main subject. By this means he shuns all those puzzling questions and argumentations, which bad judges of eloquence think so tiresome; while all his aim is to tickle the ears of the hearers with false pleasure.

We are likewise to observe, that the detached sentiments irregulars happen to throw out, are the more striking by their standing in the midst of every thing that is mean and sordid. Thus as* Cicero says, a light appears less bright, when surrounded with shades, than by utter darkness.

The world may ascribe to such pleaders what degree of merit it pleases; but still a man of true eloquence would think it an affront to be complimented upon such excellencies.

It must, however, be confessed that we lose some what by study, as the stone does by its polish, the

* Cicero. I do not recollect the very words of the original here to be in Cicero, but the reader may consult the 25th and 26th chapters of his third book De Oratore

knife

knife by the grindstone, and wine by its age. But like them, we only lose our disagreeable qualities; and the genius which literature has polished can be said to be diminished in no other sense than as it is improved.

Irregular pleaders make the strongest push at fame in eloquence, by the peculiarity of their pronunciation. They are for ever upon the road, they ply the action, as they call it, of the hand, they bellow, they strut, they pant, they swagger, they twist their bodies and nod their pates, like so many madmen. Sometimes we see them clap their hands, stamp upon the ground, strike their thigh, their breast, their forehead, and all this succeeds wonderfully well with a vulgar audience. Mean time, the man that has been regularly trained to eloquence, while he knows how to temper, to vary, to arrange the principal parts of his discourse, knows at the same time, how to suit his colouring to his action, to give every expression its proper emphasis, and if he studies any character with particular attention, it is that of being modest, both in reality and appearance.

Such people as I have been speaking of mistake rudeness for strength; and we not only see declaimers, but what is still more scandalous, some professors, who after a short practice in speaking, fling up all method, and lay about them with fire and fury, just as the fit takes them; bestowing upon those who have more regard for learning the terms of impertinent, lifeless, and spiritless, and drivelling, and every other reproachful epithet they can think of.

Well, let me compliment those gentlemen who thus without toil, without reflection, and without study, become eloquent, yet I cannot help congratulating myself, in having satisfied, though not satiated, the public, and thereby having long obtained an honourable respite from my labours, both of teaching

teaching in the school, and pleading in the forum. Nor can I reflect without pleasure, that in this my retirement, I am employed in examining and composing, for well-disposed young gentlemen, such treatises as, I hope, will be as useful to them, as they are delightful to me.

CHAP. XIV.

OF METHOD IN THE ART OF ELOQUENCE.

That an Orator is not to consider the Rules of Rhetoric as unalterable Laws.—That he ought to consider what is most becoming, and most agreeable.

Now, I am not to be called upon for such a system of rules as are laid down by the writers upon most arts; or that I should compile a body of unchangeable laws, to which a student is necessarily to be tied down; that I should settle the precise length and quality of an introduction; that I should then go into the state of the facts, and invariably settle that matter. Next the proposition or as some affect to call it, the excursion, then a stated order of examination, and all other circumstances; which some observe, as if upon compulsion, and as if it was treason to do otherwise. Now rhetoric would be a very easy and inconsiderable matter, could it be contained in one, and that a short, rule. But most pleadings must be varied, as their causes, conjunctures, occasions, and relations require. Contrivance, therefore, is a main consideration with an orator, because he must suit himself to different situations, according as his subject is circumstanced.

To do otherwise would be equally absurd, as if we were to order a commander in chief, in forming his line

line of battle, always to draw up his front in one manner, to extend his wings in another, and never to flank his army, but with cavalry. Such a manner may, in general, be extremely right where it is practicable, but he may be obliged, by the nature of his ground, to alter his disposition; supposing, for instance, a mountain should interpose, or a river run between, or that he is streightened by hills, by woods, or by some unevenness of ground. The nature of his enemies, the circumstances under which he is to fight, may change his order of battle. Sometimes he may be obliged to employ an extended line, sometimes a column, sometimes his auxiliaries, and sometimes his own troops; nay, it may sometimes be of service to pretend to fly, and acutually to fall into a rout. In like manner, nothing but the nature of the cause can direct us whether a preamble is necessary or needless; whether it ought to be long or short; whether the whole stress of the discourse ought to be addressed to the judge, or whether it may not be necessary to call in a figure, so as to apply indirectly to another; whether the state of the case ought to be concise or copious, uninterrupted or digressive, in the natural, or in any other order? The same case holds with regard to matters that ought to be examined; when it often happens that, in the same cause, one party may find it his advantage to examine one witness first, and another another; for the rules of rhetoric are not so sacred as acts of the senate or constitution, that are irrepealable, for they ought to be used as discretion and utility requires. I am, however, persuaded that in general they are of service; were they not, I should have no business to write; but should we be obliged, by that utility, to deviate from general principles, it ought to direct us, without our having any regard to the opinions of professors.

Again

Again I recommend, again enjoin, to use Virgil's expression, one capital rule, that in every pleading an orator is to regard two things; what is becoming, and what is proper. Now it is proper to make frequent deviations from the rules generally enjoined and laid down, and the same practice may be at the same time becoming. Thus we see statues and pictures differ from one another in dresses, faces, and attitudes. Bodies that are drawn bolt upright, have in them very little gracefulness. The full face, the hanging arms, the ancles touching one another, and the whole body stiff from top to toe, look listless. The gentle bend, or what we may call, the sway of the body, gives action and animation to a figure. For this reason, in painting or sculpture, the hands are formed to different actions, and the face admits of infinite variety. Some figures are formed running or rushing forward; some sitting, some lying, some naked, and others covered, and some partake of both manners. What can be more dreadfully convulsed, and at the same time critically elaborate than Myron's* Quoit-Tosser? But was any one to condemn that figure as being off of its upright, would he not betray gross ignorance of the art, the chief merit of which consists in the novelty and the difficulty with which the figure is executed? The same kind of charm and grace runs through the figures of rhetoric; which sometimes consist in the sentiment, sometimes in the expression. For they bend somewhat from off their upright, and they have thereby the merit of deviating from the general practice.

The face communicates an air to the whole picture. Yet Apelles drew Antigonus presenting his side-face only to the beholder, in order to conceal his deformity in being without one of his eyes. Thus,

* Myron's Quoit-Tosser.] He was a famous statuary, and this very piece is taken notice of by Pliny.

in speaking, are we not to throw a veil over some things which cannot be explained with propriety, or expressed with dignity. Timanthes, the Cithnian, if I mistake not, observed this manner in the piece by which he conquered Colotes, the Teian. The subject of it being the sacrifice of Iphigenia, he drew Calchas pensive, Ulysses sorrowing, and Menelaus in as deep an agony as he could express. Having then exhausted his whole powers of execution, he found that it would be impossible for him properly to represent the passions in the father's face, and therefore he threw a veil over it, and left them to the imagination of the beholder. Has not Sallust obseved the same conduct when he says, For I think it more proper to say nothing at all concerning Carthage, than not to say enough?

For the same reason it has always been my custom to tie myself down, as little as possible, to universal inflexible rules, which the Greeks call καθολικὰ. It seldom happens that such rules may not sometimes be attacked on a weak side, nay, quite overthrown. But of this I shall say more hereafter, when proper opportunities present. Meanwhile, I would not have young gentlemen think that they are sufficiently instructed in this art, if they have got by heart one of the little books of rhetoric that are generally handed about, and imagine themselves as safe with them, as if they were fortified with the very bulwarks of eloquence. The art of speaking well requires close application, extensive practice, repeated trials, deep sagacity, and a ready invention. Rules, however, may assist it, provided they point out the direct road, without confining the learner to a single track, from which, should any one think it unlawful to depart, he must be contented to make as leisurely a progress as a dancer does upon a slack rope. For this reason we often, for a nearer cut, strike off from the high road, which perhaps has been

been the work of an army, and when our direct way is barred up by bridges broken down with the force of torrents, we are obliged to go round; and if the door is in flames, we must get out at the window. The study of eloquence is widely extensive and of vast variety; every day presents us with something in it that is new, and it is impossible to exhaust the subject. I shall, however, attempt to point out its precepts, and out of those the best, having, at the same time, an eye to whatever can be changed, added, or abridged for the better.

CHAP. XV.

THE DIVISION OF THIS WORK.

THE best division, in my opinion, of rhetoric, is to consider the art, the artist, and the work. The art is the thing that is to be studied, and that is to know how to speak well. The artist is he who acquires this art; I mean the orator, whose excellency lies in speaking well. The work is effected by the artist, and that is, a good oration. These are subdivided into different species, all which we shall speak to in order; I am now to treat of the first head.

CHAP. XVI.

HAVING REFUTED SEVERAL MISTAKEN OPINIONS, OUR AUTHOR PROCEEDS TO SHOW THAT RHETORIC IS THE SCIENCE OF SPEAKING WELL.

WE are to enquire, in the first place, what is rhetoric? It is variously defined, but its definition contains a two-fold difficulty; for a disagreement arises,

arises, either concerning the quality of the thing itself, or the expressions made use of to define it. The first and chief difference of opinion upon this subject is, that some think it is possible even for bad men to become orators. But I join with others who will not allow this appellation and art can belong to any but a man of virtue. Some writers have detached eloquence from its far greater and more desirable part, I mean the virtue of life; some have termed rhetoric to be a power only; some a science, but not a virtue; some practice, and some an art, but distinct from science and morality; and some have even called it the corruption of art, or a κακοτεχνια. In general, they have placed the talent of eloquence either in persuasion, or a knack for persuasion, which may be compassed even by a man of no virtue. The common definition therefore of rhetoric is, "The power of persuasion." This opinion owes its rise to Isocrates, if he is really the author of that art which is handed about under his name. For though he was far from any intention of joining with those who defame the practice of eloquence, yet he was too rash in defining this art to be, "The artist of persuasion," or what the Greeks call πειθους δημιουργος; for I will not take the same liberty that Ennius does when he calls Marcus Cethegus the marrow of suasion.* Plato, in his treatise inscribed to Gorgias, advances almost the same thing; but it must be understood not to have been the opinion of Plato, but of Gorgias. Cicero, in many passages, defines the duty of an orator to be "The proper knack of persuasion;" and in his

* Suasion.] Orig. Suadæ Medullam. The peculiarity of this expression lies in the word suada, which our author seems to think is too antiquated to be brought into common use. But if I mistake not, it has been made use of with a very happy effect, by some of the best modern Latin poets.

books

books of rhetoric, which, by the bye, he himself did not much approve of, he makes persuasion to be "The end of eloquence."

Now persuasion may lie in money, in favour, in the authority or dignity of a speaker; in short, the very aspect, without speaking at all, when it affects us with the memory of past services, when it strikes us with the show either of misery or beauty, is decisive. For when Antonius defended Marcus Aquilius, tearing open his robe, he shewed the scars of those wounds which he had received upon his bosom, in defence of his country, and in so doing he did not trust to the force of his eloquence, so much as to the power which he knew that such a sight would have over the minds of the Roman people, which was so great, that it is believed the criminal was thereby acquitted. We have several historical proofs, besides the oration of Cato, that Sergius Galba* escaped through mere compassion, by not

* Sergius Galba.] It might perhaps be no unuseful work, could the nature of my design admit of it, to accompany the whole of this translation with similar passages from English eloquence, which was very high in the reign of Charles I. When I say this, I speak only of parliamentary eloquence, for I think that neither the bar nor the pulpit afford us, in the English language, very many specimens of eloquence in that sense in which Cicero and Quinctilian understand it. Meanwhile, this acknowledgment pays the greatest compliment that possibly can be paid, to the understanding of the English nation, as they will not suffer either their religion or their laws to be recommended by any other beauty than their native truth and justice. But parliamentary speaking of every sort, is of the deliberative kind, and therefore it fairly admits of all the embellishments suggested by our author, because a supreme tribunal is supposed to be under no direction in its deliberations from any written law, as is the case with divines and lawyers. We see the same observation hold good with regard to the Athenians, who in some instances, particularly after the case of Phryne here mentioned, made it penal to introduce any of the powerful embellishments of speech into judiciary pleadings; and indeed

not only producing his own little children before the assembly of the people, but by carrying about in his arms the son of Gallus Sulpicius. And it is generally agreed that Phryne was acquitted upon a capital impeachment, not by the eloquence of Hyperides, however wonderful it was, but through the beauty of her own figure, which he exposed to the view of the judges, by tearing the robe from her bosom. If all such circumstances, therefore, are persuasive, the definition we have mentioned is improper for hetoric.

They are, therefore, more consistent with themselves, who, though they are of the same opinion upon the main, think rhetoric to be the force of persuasion by speaking. This is the definition which Gorgius, in the treatise I have already mentioned, is forced by Socrates to asisgn it. Theodectes is pretty much of the same opinion, though it is uncertain whether the work that goes under his name, was composed by him, or by Aristotle, but there we

indeed few of them entered into the deliberative. The Romans, a more mixed, a less polished, and more uninstructed people, were fond of them upon all occasions.

Meanwhile, I cannot help thinking that many particulars recommended by our author might be introduced with vast propriety and beauty even amongst ourselves. The case here mentioned of Sergius Galba, contains a very bold figure, (if I may so call it) of action in eloquence. But did not the great Lord Strafford, when under the like circumstances with Galba, do almost the very same thing, upon the impeachment brought against him by the commons of England? yet I believe no man ever thought that he over-did his part, or that he carried it into any ridiculous ostentation.

Several of the parliamentary speakers of those days, particularly the Lords Digby and Falkland, have made use of as beautiful, and as bold figures as are to be found in all antiquity; yet we perceive in their speeches nothing that is forced, nothing that is unnatural. This undoubtedly was owing to themselves being the authors of the speeches that go under their names, and which do their memories immortal honour.

are told, that the end of rhetoric is by speaking, to lead men to that purpose which the speaker desires. But even this definition is not sufficiently comprehensive, for others, besides an orator, (whores, flatterers, and seducers, for instance) have the powers of persuasion by their speech, and of effecting the purpose they design. On the other hand, the orator is not always successful in persuading; nay, this, properly, may not be his purpose, or if it is, it may be a purpose in common with others of professions very different from that of an orator. Apollodorus too is pretty much of the same opinion, when he tells us, that the first and the capital purpose of a judicial speech ought to be, to persuade the judge, and to induce him to be of that opinion the speaker would have him. But this subjects the merit of an orator to the power of fortune; for it supposes, that if an orator should fail to persuade, he has no right to that appellation. Some writers in their definition of an orator, detach themselves from all consideration of the event. Thus Aristotle says, that rhetoric is the power of finding out in a discourse every property of persuasion. Now this definition has not only the fault we have already taken notice of, but another, which is, that it comprehends invention only, which, without expression, is not eloquence. I have already given sufficient answer to Hermagoras, who defines eloquence to be, the art of speaking persuasively; and to others, who are of the same opinion, but do not make use of the same words; but tell us, that an orator's design ought to be, to say whatever is proper, but that all he says ought to tend to persuade,* I say, I have sufficiently answered

* While I am reading the very serious encomiums which our author makes upon his favourite art, and the prodigious extent of merit and utility he allots to it, I cannot help thinking that the inimitable

all this, when I showed that persuasion was not the sole business of an orator. Various are the other opinions upon this subject. Some think that rhetoric may be introduced into all manner of business; others, that it is only applicable to civil matters, the truth of both which opinions we shall discuss in a proper place. Aristotle seems to have extended the business of an orator to every thing when he says, that eloquence is the power of speaking upon every subject, whatever is most persuasive.* Gorgias in Plato calls himself a professor of persuasion in courts of justice and other assemblies, and one who treats both of what is just and unjust, for Socrates allots to him the profession, not of teaching, but of persuading. Now through the whole of that discourse it appears, that Plato was of opinion that true eloquence could be possessed only by a good and a just man. In his Phedrus he makes it still more plain, that no one can be accomplished in this art, without both the practice and the theory of justice, to which opinion I likewise agree. Could the man who composed the Defence of Socrates, and celebrated the heroes who fell in defence of their country, works that indisputably be-

nimitable Cervantes had him in his eye in the celebrated discourse which he puts into his hero's mouth in favour of knight-errantry, many of the passages are similar, but there is great difference between ridicule and parady, and the latter being all that Cervantes meant, it ought to be considered rather as a compliment, than otherwise, to Quinctilian. Our author's cavils however upon the several definitions of eloquence he mentions, certainly shews too much of the pedant, and Turnebus has very rightly observed, that in this respect he has not acted so fairly as he ought to have done, particularly with regard to Hermagoras, from whom he brings a very partial quotation.

* Though I have not taken so great liberties with our author as Monsieur Rollin has done, yet with him I have here omitted some part of my original, because I really think it to be no better than quibbling upon words.

long

long to eloquence, be of another opinion? It is true, he lashes those men who have applied their eloquence to wicked purposes; nay, Socrates thought that Lysias disparaged him when he composed an oration which he was to pronounce in his own defence upon his impeachment, though at that time it was a general practice for practitioners at the bar to draw up the speech which a party was to deliver for himself, and thus they eluded the law, which forbad one man to speak for another. Plato likewise was of opinion, that they who separate eloquence from justice, and prefer what is probable to what is true, ought not to profess the art of eloquence, as we may see in his Phedrus.

Cornelius Celsus likewise seems to have been of the opinion I have refuted; his words are, an orator only aims at the semblance of truth. Soon after he says, "For it is not conscience but victory that is the reward of a lawyer." Were that true, he must be the vilest of mankind who would arm wickedness and guilt with this powerful weapon, and lay down rules for the practice of villainy. But I leave such gentlemen to defend their own opinion.

Now as I have undertaken to form a perfect orator whom, in the first place, I want to be a good man, I am now to return to those who have entertained more favourable sentiments of this profession. Some have judged rhetoric and civil polity to be the same. Cicero calls it a part of civil polity, which is no other than wisdom itself; others, amongst whom is Isocrates, judge it to belong to philosophy. In like manner, others define rhetoric to be the art of speaking well. This definition comprehends, not only the powers, but the morals of an orator, because none but a good man can speak well.

I have now touched upon the most remarkable definitions of eloquence, and such as have been

chiefly disputed. It would indeed, be both impertinent and impossible for me to mark out every definition, since a practice which I think is a bad one, has prevailed amongst the writers upon arts, of never defining a thing in the same terms that others have made use of before. This is a practice I am no way ambitious to follow, for I shall ever be proud to say whatever is right, although it may not be of my own invention. I define, for instance, "rhetoric to be the art of speaking well." For the man who, after finding out the best definition of a thing, hunts after any other, must take up with a worse. If what I have here laid down is admitted, it is easy to see what purpose rhetoric has, as its highest and ultimate end, for every art has an end; and if rhetoric is the art of speaking well, its end and perfection is to speak well.

CHAP. XVII.

WHETHER RHETORIC IS USEFUL?

A Refutation of what is commonly advanced against Eloquence.—Its Praises finely displayed by our Author.

I AM now to enquire whether eloquence is useful. Some vehemently deny that it is, and most ungenerously make use of the beauties of eloquence in impeaching its utility. They tell us, that, by eloquence, the wicked are skreened from punishment, that by its prostitution, the worthy have been condemned, wicked measures have been pursued, sedition and popular tumults have arisen, and wars broke forth, of which mankind still feel the dreadful effects. In short, that eloquence never appears to such advantage as when it is employed by falsehood

hood to destroy truth. For comic writers have charged Socrates with teaching in what manner to make an unjust cause get the better of a just one, while on the other hand, Plato tells us that Tisias and Gorgias professed the same knowledge. To these they add examples from the Greek and Roman history, and give us a detail of those who by the pernicious practice of eloquence in public as well as private matters, have disordered and even destroyed the constitution of states. That for this reason she was driven from the government of Lacedæmon, and that all her powers were as it were lopped away at Athens, where the pleader was forbidden to attempt to move the passions. Now, by the same way of reasoning, neither generals nor magistrates, nor medicine, nor wisdom itself, are of any utility. For Flamininus,* who so basely violated the rights of hospitality, was a general; and the Gracchi, Saturnini, and the Glauciæ, were magistrates; physicians employ poisons in their prescriptions; and they who have disgraced the name of philosophers, have been found guilty of the most infamous practises. Are we to loathe all nourishment, because eating often brings on distempers? Are we never to live in a house, because some have perished by the falling in of the roof? Ought no sword to be made, because it may be employed by a highwayman, as well as a soldier? Who is so grossly ignorant, as not to know that fire and water, those necessary servants of life, nay, to go higher, that the beautiful

* Flamininus.] I take the person meant here to have been Flamininus, who was impeached by Cato for barbariously putting to death with his own hand, a Gaulish prince, who sought his protection, and that purely to please an infamous prostitute. Commentators, however, understand here, Flamininus, who was the Roman general at the battle of Thrasymene, but I think with no propriety.

luminaries

luminaries of the sun and moon, have sometin had their hurtful effects?

But at the same time, can it be denied, that A pius, that brave, blind senator, by the force of eloquence, broke off a shameful peace, that was rea to be concluded with Pyrrhus? Or that the divi eloquence of Tully was of no service to his cou try, when he defeated, even the popular scheme the Agrarian laws? when he quelled the boldn and presumption of Catiline? and when, in a ti of peace, a supplication was decreed him, t greatest honour that can be conferred upon vic rious generals. Does not eloquence often rou from despondency into life and spirit, the droopi courage of soldiers, and while they are about encounter the most dreadful dangers of battle, p suade them that glory is preferable to living? N ther am I more charmed with the example of t Lacedemonians and Athenians, than with that of t Romans, who have always held oratory in the high honour. For my part, I think it is owing to e quence, all-powerful eloquence, that the found of cities have prevailed with dispersed multitudes form themselves into one incorporate body; r without exerting the most commanding powers speech, could legislators have persuaded so lor a creature as man, to submit to the dominion law. Nay, moral precepts themselves, fair as r ture has formed them, are more prevalent in for ing the mind to virtue, when their beauties are commended and illustrated by the brightness eloquence. Upon the whole, therefore, thou eloquence may be wickedly, as well as virtuou employed, yet it is not just to call that an evil whi may be used to a good purpose.

Now, all this, perhaps, will be disputed by the who place the whole of eloquence in the force persuasio

persuasion; but if, according to us, it consists in the art of speaking well, and that the first qualification required in an orator, is to be a man of virtue, eloquence must be confessed to be an useful art. And may I perish if God, that all-powerful creator of nature and architect of the world, has impressed man with any character, so proper to distinguish him from other animals, as by the faculties of speech. For we may see mute animals that excel us in size, in strength, in resolution, in perseverance, and in swiftness; and stand less in need than we do, of external acquisitions and helps; because nature, beyond all instructors, teaches them to walk, to feed, and to swim, sooner than we can. She has given most of them a covering to defend their bodies from cold; she has furnished them with arms for their defence, and every field affords them food for nourishment; all which are circumstances that cost man variety of labour. She therefore endued us with reason, as our noblest character, and thereby preferred us to be companions to the immortal Gods. But reason itself must be less availing and effectual to us, could we not with our tongue, express the sentiments of our minds. And this in animals is more wanting than understanding and reflection, which many of them seem to possess in a certain degree, as is plain by their contriving their habitations, building their nests, bringing up their young ones,* till they can go abroad and provide for themselves; nay, by their storing up food for the winter, and producing works which all the art of man cannot

* Orig. Excludere.] The commentators here, as is usual with them, when any thing is dark and doubtful, give us no manner of light as to the meaning of this word; and the Abbe Gedoyn has fairly left it untranslated. I apprehend it to mean, that sagacity which the old ones shew, in excluding the young ones from their nests, when they are big enough to shift for themselves.

not imitate, such as wax and honey. But though they can do all this, as they want the power of speech, they are deemed to be mute and irrational. To conclude, when nature has denied expression to man, how little, how very little, do all his boasted divine qualities of mind avail him!

If therefore we have received from heaven nothing more precious than speech, are we to esteem any thing more worthy of our attention and care? Or are we to be more emulous in excelling mankind in any property, rather than in that which exalts man above all other animals? As a farther inducement to that, we are to reflect, that no art so plentifully repays our labour, by a harvest of every thing that is profitable or agreeable. This will be the more evident, if we reflect upon the rise and progress of eloquence, and the improvements it still admits of. Not to mention, how it serves our friends, how it directs the deliberations of a senate or a people, and how it even determines the conduct of an army; how useful, how becoming then, is it in a man of virtue! Is not this single consideration a most glorious one, that from the understanding, and the words that are in common to all mankind, he can exalt himself to such a pitch of glory and power, that he will not seem to speak or to plead, but as it happened to Pericles, to lighten and to thunder. But I never should have done, were I to indulge the pleasure I feel in expatiating upon this subject.

CHAP.

CHAP. XVIII.

WHETHER RHETORIC IS AN ART?

A Refutation of the Negative.—Rhetoric proved to be an Art.

We are next to examine, whether rhetoric is an art? Nobody could imagine that this would be a question with those who have laid down rules for eloquence, since the very books are intituled, Treatises concerning the Art of Rhetoric. Cicero likewise says that rhetoric is no other than artificial eloquence. This is an excellency that not only orators have asserted to be peculiar to themselves, in order to give a better grace to their art, but even philosophers, Stoics, and most of the Peripatetics, agree with them. For my own part, I am in some doubt whether I ought to treat upon this matter in this light. For is there a man so void, I would not say of erudition, but of the knowledge of the world, as not to know that building, weaving, and the making of vessels out of clay, is an art? And can he imagine that rhetoric, the most sublime, the most beautiful perfection that exists, was brought, without an art, to the degree of excellency it now has? For my part, I am inclined to believe that they who have maintained this absurdity, did not really speak as they thought, but to display their own abilities, by engaging in a matter of such difficulty. Thus, for instance, Polycrates undertook to praise Busiris and Clytemnestra; which was pretty consistent with the other part of his conduct, if it is true that he composed an oration against Socrates.

Some people are of opinion that eloquence is natural; but they acknowledge, at the same time, that it may be assisted by art. Thus Antonius, one of

of the speakers in Cicero's dialogues upon the character and qualifications of an orator, tells us, that eloquence proceeds from observation, and not from art. I am far from saying, that we are to take what Antonius says for granted; but Cicero makes Antonius be of that opinion, in order to keep up his character, which was that of being artful without appearing to be so.

Now Lysias appears really to have been of that opinion. His argument for it is, that the illiterate, barbarians, and slaves, in speaking for themselves, always say somewhat that resembles an exordium; they state their case, they establish it, they refute their antagonists, and they generally finish with deprecations and prayers, which have in them as much of the pathetic, as peroration has. This opinion is supported by certain quibbles upon words, as follows: "That art must have been before every thing proceeding from art: that there never was a time in which mankind did not plead for themselves, and against others; but that the first teachers of this art lived lately, and about the times of Tisias and Corax; consequently, that eloquence, being older than art, it is no art." For my part, I shall be at no trouble to inquire at what time this doctrine was first broached; though we find, by Homer, that Phœnix taught his pupil Achilles both how to act and how to speak; that many orators were then living; that the three generals, in their speech to Achilles, employed every species of eloquence; that certain contests in eloquence were then proposed amongst the young men; and the embossment of the shield of Achilles represents both courts of justice and pleaders.

It is sufficient here to observe, that every thing that derives its perfection from art, has its original in nature. Otherwise we should be obliged to leave medicine

medicine out of the number of arts, because it has found out by the observation of things that are salutary or hurtful to health, and, as some are pleased to say, the whole of it consists in experience. For, before ever medicine was formed into an art, some one or other had bound up a wound and had allayed the force of a fever, not from any principles of the profession of medicine, but because they were directed to it by the nature of the disease itself. In like manner, we may deny architecture to be an art, because, in early ages, they built cottages without art.

We may say the same of music, because every nation in the world has singing and dancing after its own fashion. If any kind of speaking should be defined to be rhetoric, I should readily admit it to have existed before art. But, if every man who speaks is not an orator, and if, in those early times, men did not speak as orators, it must necessarily follow that an orator is formed by art, and did not exist before art.

This is a full answer to those who say, that, when a man does a thing that he has not learned to do what he does, does not belong to art. Now men have been known to plead without being taught. To strengthen their reasoning, they bring the examples of Demades the waterman, and Æschines the stage-player, who, both of them, were orators. But this is nothing to the purpose; for a man, who has not been taught, cannot be called an orator; and nobody will venture to say that these two persons did not study, though late, yet, better than never. As to Æschines, his father, who was himself a schoolmaster, gave him an early tincture of literature. Neither is it certain, that Demades never studied; and a continual practice of public speaking might have given him all the powers of eloquence, which he afterwards possessed: for practice is the most

powerful

powerful part of study. Be that as it will, I will venture to say, that study either did contribute, or would have greatly done so to his eloquence; and I am to observe, that he never ventured to put his orations in writing, so that we know not that his merits were very extraordinary in eloquence.

Aristotle, in his Gryllus, in his usual way of examining, has given us some fine-spun arguments upon this head. But we are to reflect, at the same time, that he has wrote three books concerning the art of rhetoric; in the first of which, he not only acknowledges it to be an art, but assigns to it some part of civil policy, as he does to logic. Critolaus, and Athenodorus the Rhodian, has wrote a great deal to contradict what I advance here. One Agrion, in a treatise purposely wrote against rhetoric, has, by the very title of his book, forfeited all our regard for the author. As to Epicurus, I am not at all surprised at him, because, by his principles, he was a professed enemy to all systems. These authors have said a great deal, but what they have said is reducible to very little. I shall, therefore, in order to prevent an endless discussion, give a very short answer to their most material arguments.

The first of them arises from the object. All arts, say they, have an object; That I do not deny: But, continue they, Rhetoric has no object that is peculiar to itself; that I will take upon me to prove to be a mistake.

Their next argument consists in a downright false charge. They tell us, "That art admits of no false conclusions, because it must be founded upon a principle, which principle must be invariably true; but that rhetoric admits of false conclusions, therefore it is no art." Now, I allow that sometimes rhetoric advances what is false for what is true; but I do

I do not agree, for that reason, that the speaker therefore admits of a false conclusion; because there is a great difference between what we admit of ourselves, and what we want others to admit of. A general, for instance, often employs false appearances. Thus Hannibal, when he was hemmed in by Fabius, having tied trusses of hay round the horns of some cattle and set them on fire, ordered them to be driven in the night-time towards the rising grounds, by which appearance he made his enemy think that he was decamping. But though he imposed upon Fabius, yet he himself knew very well what he was about. When Theopompus, the Lacedæmonian, escaped out of prison by changing clothes with his wife, though his guards concluded him to be a woman, yet he formed no such wrong conclusion of himself. Thus, an orator, when he employs what is false, for what is true, is sensible that he is doing so. It cannot, therefore, be said, that he concludes wrongfully, though he makes another person do it. Neither can we imagine, that Cicero was blinded by the mist which he boasts to have raised before the eyes of his judges when he defended Cluentius. And when a painter, by the powers of his art, throws some objects out, and some backwards, in a piece, he surely cannot be ignorant that the whole is a plane.

The same writers go on to say, "That all arts have a certain defined purpose to which they are directed." But they sometimes say, "that rhetoric has no purpose, and sometimes that it does not answer its purpose." But all this is a mistake. I have already shewed that it has a purpose, and what that purpose is; and that a true orator will always reach that purpose, because he will always speak well. Now this holds good, perhaps, chiefly against those who think that persuasion is the only purpose

of

of eloquence. But the merit of my orator, and the art I have defined, does not consist in the event. Victory is, indeed, the purpose of his speaking; but, though he may not gain the victory, yet when he speaks well, he answers every purpose of his art. A pilot wants to guide his ship safe into the harbour, but should it be beaten off by stress of weather, his merit is not the less as a pilot; I stuck, he may say, by my tackling I could do no more. A physician wants to cure his patient, but if, while he is proceeding upon the best principles of his art, the force of the disease, the unruliness of the patient, or some other accident shall disappoint him, yet still he does not wander from the purpose of medicine. In like manner, an orator's purpose is to speak well; for, as I shall show more clearly afterwards, this is an art which consists in its conduct, and not in its event. By that, I shall likewise show the common saying to be false, that arts know when they have attained to their purpose, but that rhetoric does not know; for every orator knows when he has spoken well.

Rhetoric is likewise charged with employing principles that, within themselves, are false and faulty, which is inconsistent with all art, "because, continue they, an orator advances what is false, and directs his speech to move the passions." Now when this is done with a virtuous design, it cannot be criminal, and therefore it is not faulty. For even a wise man may sometimes tell an untruth, and a speaker is obliged to apply to the passions, if the judge cannot otherwise be induced to favour the equitable side of a question. People of no penetration may sit as judges, and it is often necessary to impose upon them in order to prevent their deciding wrongfully. For were none but wise men to judge, to hear, and to resolve; was hatred, was favour, was prepossession

sion, was false evidence to have no influence, there would be little, very little, room for eloquence, and all the business of an orator would be to tickle the ear. But if the dispositions of an audience are wavering, if truth is liable to a thousand injuries, he must fight with art, and employ those weapons that can best serve his cause; for there is no setting a person right after he has wandered from the direct road, without making him face about another way.

Another cause of carping against rhetoric is, because orators speak on both sides of the question, from which its enemies conclude thus: no art can be contradictory to itself; and rhetoric is contradictory to itself. That no art destroys what it has effected. But that this is the peculiar business of rhetoric. Again, it teaches either what we ought to say, or what we ought not to say. If it does not teach what we ought to say, it is no art, neither is it an art, if it teaches how to contradict that. Now, all this is applicable only to that species of rhetoric which is inconsistent with the practice of a good man, and of virtue herself. For rhetoric never patronizes the cause of injustice, and it is therefore a very rare, and a very wonderful case, where two orators, that is to say, two good men, are employed upon different sides of the same question. Yet, because, it is even possible for two wise men to speak in direct opposition to one another, and yet both of them think that they have justice on their side, nay, would their profession admit of it, they would come to blows, I shall give an answer to all that has been advanced, so as to make it appear that such arguments are not applicable even to the man of bad principles, who assumes to himself the title of an orator. For rhetoric does not contradict itself; one cause is measured * with an-

* Orig. (Causa enim cum causa, non illa secum ipsa componitur) This is a metaphor taken from the custom of gladiators measuring their weapons with one another, before they entered upon action.

other

other, but eloquence never destroys her own powers. Supposing that two coming from the same school should oppose one another, is there no such thing as an art which both of them have learned? We may as well say there is no such art as that of fighting, because two gladiators bred under the same master, are often matched together; that there is no such art as steering a vessel, because in sea engagements one steersman acts against another; nor of war, because one general often fights against another.

Thus, it is certain, that rhetoric does not destroy its own effects, for an orator does not destroy the argument which he himself has laid down, neither does rhetoric; for whether, as some think, the end of rhetoric be to persuade, or if, as as I have before observed, fortune should match one man of virtue against another, yet still, their object of dispute is about what is likest to truth. Now one thing may be more credible than another, yet still that is not contrary to the credibility that is in the latter. For as there is nothing contradictory in saying that one thing is whiter than another, or one thing sweeter than another, so one thing may be more probable than another. The art of rhetoric never teaches what we ought not to say, nor any thing contradictory to what we ought to say; but it instructs us after what manner to speak in every cause we may take in hand. Neither, (though it very seldom happens otherwise) is the cause of truth always to be maintained; for public utility sometimes requires an untruth to be defended.

Cicero, in his second book concerning an orator lays it down by way of contradiction, "That nothing comes within an art but things that are known, but the whole business of an orator consists not in knowledge, but opinion. For when we are in a court we speak what the judges don't know

know, and we speak what we don't know ourselves." As to what the judge knows of a cause, it is nothing to our purpose; I am therefore to examine whether nothing comes within an art but things that are known. Now rhetoric is the art of speaking well, and an orator knows how to speak well, but he may not know whether what he says is truth. No more do they who tell us that fire or water, or the four elements, or indiscerpible atoms, gave rise to this creation: No more do they who calculate the distances of stars and give us the mensuration of celestial and terrestrial bodies, yet each calls his system an art. Now if reason tells us the force of probability is so strong in favour of those systems, that they are not matters of opinion but knowledge, does not reason dictate the same thing with regard to an orator? But still, it may be urged that an orator does not know on which side the truth lies. No more does the physician, whether the patient is affected with the head-ach he complains of; but he proceeds as if he was, and none can deny medicine to be an art.

Let me add that eloquence does not always make truth, but what is like to truth, its only object. Now an orator must know whether he speaks what is like to truth. They who are of an opinion contrary to mine, may add, that often in a court of justice the same orator pleads at different times upon both sides of the question. But this is a practice not to be imputed to the art but to the pleader.

These are the chief objections made against rhetoric; there are others of less moment, but proceeding upon the same principle. We have, however, a very short way to prove that rhetoric is an art. For whether, with Cleanthes, we define art to be a power operating by method and order, surely none can doubt, that there is method and order in speak-

ing well; or whether we strike in with the general opinion, which tells us, that art consists of rules agreeing and co-operating to the useful purposes of life; we have already shewn that rhetoric possesses every one of those properties. Shall we add, that, like other arts, she consists of theory and practice? If logic is an art, as it is generally admitted to be, rhetoric must be one too, since they differ from one another in their appearances more than in their natures. Neither are we to forget that an art must be allowed to that profession, in which one man proceeds by rules, and another by none; and wherein the person who is instructed has more success than he who is illiterate. Now a learned man will not only get the better of an unlearned one, in the art of rhetoric, but a learned man must yield to one more learned than himself; otherwise we should not have so many rules, nor so many great men to teach them. This ought to be acknowledged by every one, and especially by me, who never admit of any distinction between an eloquent and a virtuous man.

CHAP. XIX.

UNDER WHAT HEAD OF THE ARTS RHETORIC COMES.

Now some arts, however, consist of speculation, that is, examining and calculating matters; astronomy for instance, which requires no practice, but is bounded by the knowledge of the subject that is studied. Other arts consist of action, which is both their end and their perfection; dancing, for instance, which reserves nothing when action is over. Other arts consist of the effect which the perfection of a work has upon the eye; such as painting. I am inclined

inclined to think that eloquence is of the second kind; for it is by action that all her virtues are carried into effect, and this seems to be universally allowed.

In my opinion, however, she seems to partake greatly of the other kinds of arts: for sometimes she can wrap up herself in speculation. An orator, even when he holds his peace, is possessed of eloquence; and if either through design or accident, he gives over pleading, yet still he is as much an orator as a physician is a physician, after he ceases to practise. The satisfaction we receive from abstracted studies, is perhaps, of all other satisfactions, the greatest; and the pleasure we receive from learning is then most pure, when it is separated from all action or operation but the contemplation of its own perfection and properties. Rhetoric has somewhat in it of the effective kind, as appears by her written orations and histories, a species of composition that falls under the division of rhetoric.

If, however, she must be ranked under one of the heads of arts I have already mentioned, let us conclude that she is of the active or administrative kind, because her greatest merit and her most frequent practice consists in action, and both those terms are, in effect, the same.

CHAP. XX.

WHETHER ART OR NATURE CONTRIBUTE MOST TO ELOQUENCE.

I AM sensible it has been matter of dispute whether eloquence owes most to genius or to learning: but this is a dispute foreign to my subject, because I lay it down as a maxim, that a complete orator cannot be formed but by both. I think it, however,

ever, of great importance, to state the true question that arises upon this head. For if you suppose a separation between natural and acquired talents, the former will be of great significancy without the latter, but the latter of none without the former. But supposing them to unite in equal but not very considerable proportions in an orator; in that case I think that natural talents will be more beneficial to him than acquired ones. But if we suppose them to unite in the highest proportions, I think that the finished orator will owe more to learning than to nature. In like manner, no art of agriculture can improve the land that is naturally barren, but a fruitful soil will, even without culture, produce somewhat that is for the benefit of mankind. Meanwhile, when culture is added to fertility, it is of more effect than the natural richness of the soil is. I should prefer a block of Parian marble to a statue cut even by the hand of a Praxiteles out of a millstone,* but was the same master to polish that block, it would become more precious through his art, than its own value. In short, nature gives the material which is wrought, but study the art which executes. Art can do nothing without the material, while the material has a value independent of the art; but perfection of art is preferable to richness of material.

* Praxiteles. He was the most famous sculptor amongst the antients, but I am not sure whether our author's judgment here ought to admit of a general application. A great sculptor, or painter, ennobles the rudest material by his work; and in our own country we know of statues cut out of very coarse materials, which are of far more value than the best block of marble that ever was imported from Greece or Italy. The cartoons of Raphael are inestimable, merely by the justness of their design, and their expression of the passions, without regard either to the canvas, or the colouring

CHAP.

CHAP. XXI.

WHETHER RHETORIC BE A VIRTUE?

A GREATER question now arises, whether rhetoric ought to be ranked with those middling kinds of arts which are neither laudable nor blameable in themselves, but are profitable or pernicious according to the morals of those who exercise them; or whether, with several other philosophers, we are to hold it as a virtue.

For my own part, with regard to the general practice of speaking in public, I see either no art at all, or somewhat that I may call a very pernicious art, for I perceive many speakers rushing headlong on without method, without literature, as impudence or hunger directs them. For I am of opinion, that many have exercised, and some still do exercise, their talents of speaking, to the destruction of mankind. There is likewise what the Greeks call ματαιοτεχνια, or an idle imitation of art, which not having any thing in itself either good or bad, consists of unavailing study, such as the dexterity of the fellow, who without once missing his aim, could at a certain distance throw small pease through the eye of a bodkin, and when Alexander was witness of his dexterity, he is said to have presented him with a bushel of pease, a reward that was very suitable to the merits of the performance. In this rank I place all those who employ great part of their life in studying and toiling at declamations, which they form upon subjects as remote as possibly they can be from any thing that can happen in real life. But true eloquence, such eloquence as I endeavour to bring into practice, such eloquence as I have figured to myself in

in idea, and such as becomes every worthy man, must appear to be a virtue.

This opinion is supported by philosophers with many quick and pungent arguments, but to me it appears very plain, from an argument very simple in itself, and more peculiarly adapted to our profession. Philosophers tell us, if it is the property of virtue to be consistent with herself in regard to all she does, or omits doing, (which property is termed prudence), the same property prevails with regard to all we speak, and all we do not speak. Now if we know virtues to be such by having dawnings and principles of them within our minds, even before we are taught them; for instance, barbarians and clowns have some idea of justice; then nature has certainly formed us in such a manner as to fit us to plead for virtue, though not to perfection, yet so as to exhibit certain principles of eloquence, as I have observed. Now those arts which are distinct from virtue, are void of this property. Therefore as eloquence consists of two manners, the smooth and the argumentative, the first of which belongs to rhetoric, the other to logic; and (which Zeno thought to be so near of kin to one another, that he compared the one to an open hand, and the other to a clenched fist) there is even some virtue in disputation; and consequently there can be no manner of doubt that there is virtue in the other manner, which is far more beautiful and open.

But this will appear more fully and plainly by facts. For unless an orator knows how to distinguish between what is virtuous and what is wicked, how can he hope to succeed in panegyric? Or in counselling, without knowing the interest of the public; or in judging, without knowing what justice is? Let me go farther; does not the same profession require even fortitude, as an orator has often

occasion to speak in opposition to the clamour of a turbulent populace, or the power of guilty great men; nay, sometimes, as was Cicero's case when he pleaded for Milo, surrounded with troops of armed soldiers? So that if eloquence is not a virtue, there is no such thing in it as perfection.

Besides, if in every animal that property in which it excels other creatures is to be deemed a virtue, as force in the lion, swiftness in the horse, it is certain that mankind excels all creatures in reason and in speech; why therefore are we not to believe, that his excelling in eloquence as well as in reasoning, is a virtue? Crassus very properly maintains this, for Cicero makes him say, "That eloquence is one of the highest virtues." And Cicero himself, in his own character, when he is writing to Brutus, as well as upon many other occasions, calls eloquence a virtue.

But it may be said, we have known profligate fellows sometimes open their pleadings, state their facts, and inforce their proofs with consummate art and address. But have we not known highwaymen fight with great resolution, without allowing their courage to be a virtue; and yet courage is a virtue. We have known a profligate slave bear the rack, without uttering a groan. But shall we, therefore, deny that there is merit in patiently enduring pain? A great many people do the same; but there is a great difference in their principles of acting. I shall therefore say no more upon this head, because I have before treated of the utility of eloquence.

CHAP.

CHAP. XXII.

CONCERNING THE SUBJECT OF ELOQUENCE.

I AM of opinion, and not without authorities to support it, that all matters proposed for an orator to speak upon, are subjects for eloquence For, in Plato, Socrates tells Gorgias that a subject does not consist in words, but in facts; and in his Phædrus, the said author very plainly proves that eloquence may be employed, not only in public trials and assemblies of the people, but in matters of private and domestic concern. From which we are to conclude that to be the real sentiment of Plato himself. And Cicero, in a certain passage, says that the subject of rhetoric consists in whatever she handles; but, at the same time, he restricts the things that she ought to handle to a certain number. In another passage, however, he says, " That the energy of eloquence, and the profession of true oratory, seems to undertake and promise, that an orator should be able to treat every subject that shall fall in his way, elegantly and copiously." In another passage he says; " For as to an orator, all the accidents and occurrences of human life ought to be by him examined, heard, read, discussed, handled, and managed, because human life is the scene of all his action, and the subject of all his eloquence.

As to what I call the matter, that is, the subject, of eloquence, some have extended it to an infinite variety, and others have said that such an infinity does not belong to eloquence; and they call her a vague art, from her running on from one subject to another. I shall have but very little dispute with either

either of those opinions; for while they acknowledge that she handles all kinds of subjects, they affirm that this very multiplicity renders eloquence improper to treat upon them. But multiplicity does not imply infinity of subjects. Other arts, of less moment than that of eloquence, deal in a multiplicity of matters. Architecture, for instance, deals in the knowledge of every thing that is useful for building; and the art of embossing comprehends gold, silver, brass and iron. As to sculpture, it comprehends, besides the materials I last mentioned, wood, ivory, marble, glass, and gems. For though another profession may deal in the same subject that rhetoric does, that subject does not therefore become improper for rhetoric. Were I to ask, in what material does a statuary work? The answer would be, in brass, Were I to ask, in what material does a founder work? I should be immediately answered, in brass. Now, a vase is very different from a statue. Are we to deny medicine to be an art, because it sometimes prescribes unction and exercise, the same as a master of an academy does; and because cooks, as well as physicians, deal in the nature and quality of foods?

As to the objection, that it is the business of philosophy to treat of what is virtuous, useful, and honest, it makes nothing against my purpose; because, when they speak of a philosopher, I suppose they mean a man of virtue. Then, how should it be surprising that an orator, whose character I never separate from that of a man of virtue, should be conversant in the same matters? Especially, as I have shewn in the first book, since philosophers have taken possession of this province, after it had been abandoned by orators; and as it was the birth-right of eloquence, philosophers are therefore to be looked upon

upon as intruders into our business. To conclude, though it is the business of logicians to dispute on every subject that comes before them, but in a more succinct, quick manner, yet still, why may not the same matters be proper subjects for a smoother and more ornamented manner of speaking?

The following case is sometimes put: Well then, say they, an orator must be skilled in every art, if he ought to speak upon every art. Here I can answer in Cicero's words, who says, "No man, in my opinion, can be a complete and all-accomplished orator, unless he has attained to the knowledge of all subjects, and arts of great consequence." But it is sufficient for my purpose, that an orator is not unacquainted with the subject upon which he speaks. It is impossible for him to be acquainted with all causes, and yet at the same time it is his business to speak upon all. But how is he to do that if he is unacquainted with them? Why, let him speak only to causes he is acquainted with. In like manner, if he is to speak of an art, let him study it, and after he has studied it, let him speak of it.

But what are we to infer from this? If an orator is unacquainted with the subject of building, or music, a builder or a musician will speak better to those professions than he can; doubtless, they will. For even a country illiterate lawyer will plead his own cause better than an orator can, who knows nothing of the subject he speaks upon. But if the musician, the builder, or the lawyer instructs the orator, he will speak better than his teacher. But when any particular illustration is wanted, the builder will speak better upon building, and the musician upon music; not that either of them is an orator, but each will do the business of an orator; in like manner as one who ties up a wound may not

be a surgeon, and yet he may do the business of a surgeon.

Are matters of this kind never treated in a panegyrical, a deliberative, or a judiciary manner? If so, while the making a harbour at Ostia was under consideration, an orator was not to speak his mind on that subject, because the work belonged to the art of architecture. Has an orator never occasion to enquire, whether discolourings and swellings in the body proceed from crudities or from poison? and yet that enquiry belongs to the art of medicine. Is not an orator to speak upon measures and numbers? Yet these are parts of the mathematics. In short, I think scarcely any question can arise, that may not fall under the cognizance of an orator; if any does not, then it is not the subject of his discussion. I therefore have properly defined the matter of rhetoric to be "every thing that is subject to an orator's discussion;" and this appears even from the common course of conversation; for when we get any subject to speak to, we very often preface it with saying, that we have got a proper subject for our discussion. Gorgias was so much of opinion that an orator ought to speak upon all subjects, that he suffered his scholars to question him, at their public meetings, upon whatever subjects each of them pleased. Hermagoras, likewise, comprehended all subjects in rhetoric, by saying, that its matter lay in causes and questions. But should any one think that questions do not belong to rhetoric, he differs with me; but if they belong to rhetoric, he confirms what I advance; for there is nothing but what may fall into a cause or a question. Aristotle, likewise, by dividing an oration into three parts, the judiciary, the deliberative, and the demonstrative, has given us his

his great authority for bringing almost every thing under the cognizance of an orator.

A very few examine into the nature of the instrument of rhetoric, by which I mean, that which forms the matter, and without which it is impossible for us to give our labour all the effect we desire. But, in my opinion, this question relates rather to the artist than to the art; for science, even though it does not operate, may be complete, and, therefore, it requires no instrument. But workmen do; an embosser, for instance, must have his tool, and a painter his pencil. I shall, therefore, defer this subject till I come to treat of an orator.

QUINCTILIAN'S INSTITUTES

OF

ELOQUENCE.

BOOK III.

CHAP. I.

INTRODUCTION.

CONCERNING GREEK AND LATIN WRITERS UPON THE ART OF RHETORIC.

HAVING in the second book enquired what rhetoric is, and what is its purpose; I have, to the best of my abilities, likewise shewn it to be an art, and a profitable one too, for the purposes of life, and likewise that it is a virtue: I have also proved its subject-matter to consist of every thing that falls in its way to discuss. I shall now proceed to treat of its original, of its constituent parts, and in what manner they are to be found out and handled. Which last is the only subject that most writers upon the art of rhetoric have confined themselves to; nay, Apollodorus has restricted himself to the judiciary part of it only.

I am sensible what a task I undertake, by thus (for the satisfaction of those that want to be instructed

structed in this art) entering upon a labour, that, through the vast diversity of opinions which I am to examine, will be a matter of great difficulty, and, perhaps, not very pleasing to my readers, because it contains little more than a bare system of rules. In other parts of this work I have endeavoured to throw in some embellishments, not in order to make a display of my genius, (for, had that been my purpose, I could have chosen a much more proper subject), but that I might thereby the better recommend to the study of youth what I thought was necessary for their instruction; imagining that the beauty of style would allure them to study, while a jejune, dry manner, I was afraid, might give them disgust, and be grating to the delicacy of their ears. Lucretius had the like reason for digesting his system of philosophy into verse. For he uses this well-known simile:

As when physicians, for the sickly boy,
Must nauseous, salutary, draughts employ,
With pleasing sweets they stain the goblet's brink;
Then health returns; for, thus deceiv'd, they drink.

But I am afraid that this book will be abundantly more bitter than sweet, and be more wholesome than pleasing, to study. Nay, I am afraid that it will be still more disagreeable, because most of its contents are not of my invention, but have been delivered by others.

Add to this, that some are of a contrary opinion, and therefore oppose mine; because many authors, though pointing at the same purpose, have, however, pursued it by different paths, in which each has his followers. Now each thinks his own path the best, and it is no easy matter to make a boy alter the prepossessions he has imbibed; because every one is more apt to take up with what he already

already knows, than to begin to study anew. It appears from the last book, that the diversity of opinions amongst authors is infinite. In the first place, by writers who made improvements upon what they found rude and imperfect. In the next place, by those who from a vanity to contribute somewhat of their own, altered what ought to have stood as it was.

For Empedocles, after what is left us by the poets, was the first who taught some parts of rhetoric; but the first who laid down rules for it, were two Sicilians, Corax and Thysias, who were followed by Gorgias of Leontium, a scholar, as it is thought, of Empedocles. He living to the great length of a hundred and nine years, was cotemporary with great numbers of orators, and consequently was the rival of those I have already mentioned, and outlived Socrates himself. Thrasymachus of Chalcedon, Prodicus of Chios, and Protagoras of Abdera, were his rivals or cotemporaries; and it is said that Euathlus paid the latter a fee of a thousand guineas for teaching him the art of rhetoric. Of this same number likewise was Hippias of Elus, and Alcidamus of Elea, whom Plato calls Palamedes. Antiphon is said to have been the first who composed a pleading; and besides laying down rules for the art itself, he is held to have been a most excellent pleader in his own cause, upon a capital impeachment. I am likewise to mention Polycrates, who, as I have observed already, wrote an oration against Socrates: and Theodorus of Byzantium, one of those whom Plato calls word-joiners.* Of those, Protagoras, Gorgias, Prodicus, and Thrasymachus, are said to have been the first who treated of general topics. Cicero, in his Brutus, says, that no writer before

* Orig. λογοδαιδαλος.] The meaning of this is the dædalus of words, importing that they were curious chiefly with regard to the mechanical structure of their language.

Pericles

Pericles knew any thing of ornamented eloquence; but that the works of Pericles are not without some ornaments. For my part, I find nothing in them that ought to give him so great a character for eloquence. I am not therefore surprised that some think he left nothing in writing, and that the works which go under his name were composed by others.

Many orators succeeded those I have mentioned; but Isocrates, of all the hearers of Gorgias, made the greatest figure, though authors are not agreed who was his master; though I am of opinion with Aristotle, that Gorgias was. It was then those two great men struck into different paths.* For the pupils of Isocrates excelled in all kinds of studies, and when he was in the eighty-ninth year of his age, Aristotle began to give afternoon-lectures upon eloquence, making frequent use, as we are told, of that well-known parody, from the Philoctetes of Socrates.

It is scandalous to be silent, and hear Isocrates speak.

Rhetoric, as an art, is beholden to both. Theodoctes, whose work I have already mentioned, was their cotemporary. Theophrastus, the scholar of Aristotle, wrote likewise with great accuracy upon rhetoric, and from that time philosophers, particularly the leaders of the stoics and peripatetics, have applied more earnestly than rhetoricians themselves have done to this art. Hermagoras afterwards struck out, as it were, a walk to himself, in which he was followed by many; and Athenæus seems to have been his rival, and, at least, his equal in this art. It afterwards received great improvements from Apollonius of Molon, from Areus, from Cæcilus, and Dionysius of Halicarnassus.

* See this matter fully handled in Cicero de Oratore, l. 3. c. 34 & 35.

But the most famous professors after them were, Apollodorus of Pergamus, who taught Cæsar Augustus at Apollonea; and Theodorus of Gadara, (who chose to pass for a Rhodian), and whose lectures, Tiberius Cæsar, we are told, assiduously attended when he retired to that island. Those two professors striking into very different manners, gave rise, as we have seen often to be the case in philosophy, to the different sects of Apollodoreans and Theodoreans. But we must have recourse chiefly to the disciples of Apollodorus for the rules he laid down; of these, Caius Valgius was the most accurate compiler in Latin, and Atticus in Greek. The treatise he addressed to Matius appears to be the only piece he wrote upon this subject, for he disavows, in his letters to Domitius, all the tracts that went under his name. Theodorus was author of several pieces; and some people, who are now alive, remember to have seen him hearer to Hermagoras.

So far as I have been able to learn, Marcus Cato, the famous censor, was the first who collected some materials upon this head, and upon them Antonius afterwards formed his plan, which he never finished, and is the only work of his now extant. He was succeeded by some less considerable orators, whom I shall particularly mention if occasion shall offer. But Marcus Tullius Cicero, that brightest luminary of eloquence, while he instructs us in her rules, gives us the noblest specimen of executing, as well as teaching, the art of rhetoric. After this great author, it perhaps would have better become me to be silent, did not he himself tell us, that his pieces upon rhetoric had carelessly slipped from him when a young man, and had he not purposely omitted in his treatise concerning the character of an orator, those minuter points which are so generally useful. Cornificius wrote a good deal upon the same subject.

Stertinus wrote somewhat, as did the elder Gallio; but Celsus and Lenas, who lived before Gallio, wrote still more accurately than he, as have, in our own days, Virginius, Plinius, and Rutilius. Some eminent authors upon the same subject are still alive; and had they not omitted some things in their writings, I should have been spared the trouble of this work. But I forbear to mention the living; the season of their glory is yet to come; their virtues will be transmitted to posterity without the envy that now attends them.

However, after such a number of excellent authors, great as they are, I shall not be afraid, upon certain occasions, of advancing my sentiments likewise. For I have not, from any spirit, as it were, of superstition, bound myself over to any sect; and I have opened a field in which my readers may chuse what they best approve of. As I have collected into one body the compositions of many authors wherever I have no room to shine as an ingenious writer, I shall be contented with the character of a careful compiler.

CHAP. II.

CONCERNING THE ORIGINAL OF RHETORIC.

I SHALL not expend much time in inquiring into the original of rhetoric. There can be no manner of doubt that nature, the parent of mankind, and of the world, endowed man with speech. This being the unquestionable original of that property, common utility cultivated and improved it, till it was completed by study and practice. Now, I cannot see why some imagine that eloquence owes its rise to men's studying how to speak accurately in their

their own defence, when their welfare was endangered. This, indeed, accounts for its original in a nobler way, but it is founded upon a mistake, because the impeachment comes first and the defence afterwards; unless we are to suppose that the man who made the first sword, made it in order to defend himself, and not to destroy others.

The practice of speaking, therefore, was introduced by nature; the art of speaking, by observation. For as men, seeing in medicine some things that were wholesome and some unwholesome, erected it into an art by observing those properties; thus, in speaking, they found some things that were proper, and others improper, and marked both, the one to be imitated, the other avoided, and study suggested some improvements of her own. These observations being confirmed by general experience, then every one instructed another in what he himself knew.

Cicero,* indeed, tells us that eloquence took its first rise from the founders of cities and of laws, who certainly

* Cicero.] Our author was probably pretty far advanced in years when he composed this work; and he was so well acquainted with Cicero's writings that he seems, sometimes, to quote them by his memory; neither can I find that the ancients had to their books the pretty conveniencies that our's have, I mean that of indexes. It is, therefore, not very surprising that some inaccuracies should slip here and there into this work. The present passage, I think, is one, for I do not recollect that Cicero commits the absurdity charged upon him here by our author; his words are, speaking of eloquence, "What other power could have been of sufficient efficacy, either to collect the dispersed individuals of mankind from all quarters into one place, or to bring them from savage barbarous life to a social regulated intercourse; or, after states were founded, to mark out laws, forms, and constitutions, for their government?" Cicero, in the beginning of his first book concerning invention, has explained this matter more at large; for he there supposes, "That when mankind lived in a savage state," (by which he does not mean, by the bye, what he calls the state of nature), "some great

certainly must have had great powers in speaking. But I know not how he comes to make this the first original of eloquence, since whole nations still wander about, without cities and without laws, yet some amongst them act as ambassadors, some impeach, others defend, nay, they form a judgment of each other's merit in speaking.

CHAP. III.

CONCERNING THE FIVE PARTS OF RHETORIC.

Now, with many and great authors, I divide the whole system of speaking into five parts; I mean, invention, disposition, elocution, memory, and delivery, or, which is the same thing, action. Every speech expressing any certain purpose, must necessarily consist of matter and words; if it is short, and closes with a single proposition, it perhaps requires nothing else, but if it runs into any length, it re-

great and wise man, knowing the ingredients of which man was formed, and the power of those properties which resided in his soul, bethought how he could call them into action, and lay down rules for improving them. He then, by a certain system, compelled into one place men who were before wandering in the fields or lurking in wild holes. Having thus collected them, he introduced into society whatever was honest and virtuous; and though, at first, they disliked a life they were not used to, yet he fixed their attention by his wisdom and eloquence, and from brutes and savages he rendered them mild and gentle. Now, in my opinion, it must have required uncommon abilities in speaking to have thus, of a sudden, reclaimed mankind from their barbarous habits, and made them embrace the useful purposes of life."

Both these quotations appear ridiculous enough, if we consider them in any other light than as coming from a professed orator; for, when Cicero speaks as a philosopher, he gives a much more sensible account of the original of society. These passages, however, absurd as they are, are infinitely more defensible than what Quinctilian here charges upon Cicero.

quires more. For, perhaps, it is not only material to speak to the purpose, and with propriety, but to know where to introduce what you have to say; this, therefore, gives rise to disposition or arrangement. But we shall neither be able to speak all that our subject will admit of, nor yet to introduce every thing we have to say in its proper place, without the assistance of memory, which, for that reason, forms the fourth part. All those four parts, however, may be vitiated, nay, utterly lost upon the hearers, by a pronunciation that is disagreeable, either in the sound or in the action; and, for this reason, delivery holds the fifth part.*

CHAP. IV.

CONCERNING THE THREE KINDS OF CAUSES.

THERE is some doubt whether the kinds of causes ought to be reduced to three, or more. It is true, almost all the ancient writers of great authority have followed Aristotle in fixing them to three, and he only substitutes the word popular for that of deliberative. For my part, I think it safest, as well as most rational, to follow the generality of authors. There is, therefore, one kind which contains praise and dispraise, and which we shall call by the better quality, commendatory, though others call it the demonstrative part; the next is the deliberative part; the next is the judicial. These three lesser heads include all the subdivisions, every one

* Mr. Rollin has, I think, with great judgment omitted part of the original of this chapter, which consists only of a dry repetition of the sentiments of rhetoricians and others, concerning the divisions of the art, which can be of no manner of use to an English reader.

of

of which must be resolved into praising or dispraising, persuading or dissuading, attacking or repelling. All these have in common to them the arts of conciliating, of explaining, exaggerating, or diminishing, and of soothing, or rousing, the passions of the hearers.

Neither do I agree with those who are of opinion that the commendatory kind ought to be confined to moral matters, the deliberative to what is profitable, and the judicial to matters of justice; for this division is calculated rather for the purposes of conveniency and shew, than of truth. All those qualities require the mutual aid of one another, for the commendatory kind must touch upon what is just and what is profitable, and honesty ought to influence every intention; and rarely do we find any judicial matter that does not partake of some of the qualities I have already mentioned.

CHAP. V.

CONCERNING THE THREE EFFECTS OF ELOQUENCE—THAT QUESTIONS ARE EITHER LIMITED OR INDEFINITE.

EVERY speech consists of the things that are expressed, and the words that express them. Eloquence is compleated by nature, art, and practice, to which some add imitation, but I conclude it under the head of art. Now the business of an orator is threefold; to instruct, to move, and to delight. But all the three do not always suit with the subject. Some subjects will not suffer an orator to attempt to move the passions, but wherever that can be done, it has vast effect.

It is agreed, that questions are either indefinite or limited. The indefinite are such as, being independent

pendent of persons, times, places, and the like circumstances, admit of being handled in different senses; the Greeks call this a θεσις, and Cicero calls it a propositum or proposition. Limited questions arise from a complication of things, persons, times, and the like circumstances; the Greeks call them υποθεσεις, and we, causes; and all debates arising upon them are confined to things and persons. The indefinite kind is the most ample, because out of that springs the limited. For example, whether one ought to marry, is an indefinite question; whether Cato ought to marry, is a limited one, and therefore may become a matter of deliberation.

But this kind sometimes may relate to some particular circumstance, without being confined to any one particular person. Whether one ought to have any share in the government, when his country is oppressed by a tyrant? points at a particular circumstance; though the question is quite indefinite or single, when it is, Whether we ought to have a share in the government? But here the particular person is, as it were, concealed. For the word tyrant makes it a double, and not a single question, and introduces into the mind a secret consideration both of time and quality; so that this cannot be properly called a cause.

Those questions, however, which I call indefinite, others call general; and if this term is just, limited questions ought in like manner to be termed particular, or special ones. Now, in every special question a general question is supposed to pre-exist, and I am not sure whether in causes likewise, whatever comes to be disputed with regard to its quality be not general. Milo killed Clodius; he was justified in killing the man who way-laid him. Now the question here to be considered is, whether a man is justified in killing another who way-lays him? The following are all general questions; whether hatred has been

been the cause of a villainous action? Whether avarice has? Whether we are to believe what is extorted by the rack? Whether we are to give credit to speaking witnesses, or to silent proofs? For it is certain that every general question may be comprehended under a definition.

Some are of opinion that those cases which are bounded by persons and causes, may be termed theses, by viewing them in another light. Supposing the cause to be, The trial of Orestes. The thesis is, Whether Orestes was acquitted justly? Of the same kind is, Whether Cato did right in giving Marcia to Hortensius? Here they distinguish the thesis from the cause, for the one is of the speculative, the other is of the active kind; the thesis is canvassed for the sake of truth only, but the cause is actually pleaded and carried into decision.

Some, however, think that all universal questions are of no use to an orator, because it is to no purpose to make it appear, that a man is to marry, or to undertake public affairs, if he is unfit for either, through age or infirmity. But that may not be the case in other questions; for instance, whether virtue is the final good? Whether the world is governed by providence? Nay, with regard to questions that turn upon a person, it is not enough to treat of the general question, and yet, without discussing that, you cannot apply the question to any particular. For unless Cato has considered, and is clear that matrimony is a right thing, he never will make it a matter of deliberation, Whether he shall marry? And unless he resolves to marry, it never will become a question with him, Whether he shall marry Marcia?*

CHAP.

* Our author in the original here has introduced a great many terms, definitions, and discussions, that might be of use to be known both to scholars and masters in his time and country, but can be of no manner of use to a modern. I have therefore, with Mr.

CHAP. VI.

THAT THE STATE OF A CAUSE IS THREEFOLD.

THE state of a cause is the main purpose for which the orator pleads, and which the judge chiefly is to consider; and that, indeed, is the substance of the cause.

Most writers agree upon three general states; conjecture, definition, and quality. This is the opinion of Cicero, in his book concerning the character and qualifications of an orator; and he thinks they contain every point that can come into dispute or doubt. Whether any thing happened? is the conjectural kind. What happened? belongs to definition; And of what nature the thing is that did happen? relates to the quality of the action.

I own that upon this head I have somewhat changed the opinion I formerly entertained. Were my whole aim fame, it would be, perhaps, safest for me to persevere in that opinion which I had for so many years not only taught but defended. But I cannot bear the very thoughts of dissembling any part of my sentiments, especially in a work which

Mr. Rollin, omitted great part of this and the preceding chapter. If the reader shall please to consult the translation of Cicero de Oratore, he will find this matter discussed with great elegance and perspicuity. It is sufficient to give an instance of each state or issue Quinctilian here mentions. In Cicero's pleading for Cælius, he put the issue upon Cælius never having attempted to poison his sister; and therefore it was conjectural. In his oration for Plancius, he forms a definitive state, by examining, Whether that distribution of money which was made by Plancius, could be defined to be public corruption? In his oration for Milo, the issue turns upon the quality of the action, whether Milo was justifiable in killing Clodius?

I compose

I compose for the benefit of youth. Hippocrates,* the famous physician, acted nobly in acknowledging himself (lest posterity might have been misled) to have been under some mistakes. And Cicero, in some of his later writings, frankly condemned some of his former, such as his Catullus and his Lucullus, and his books of rhetoric, which I have already mentioned; and indeed it would be toiling to no purpose in study, if, notwithstanding our perseverance, we were debarred from improving upon what we knew before. Nor, indeed, are any of the rules I then laid down needless, because they may be resolved into the principles I am now recommending. Therefore, let no man repent his having learned them. I am not only endeavouring to collect the same materials, but to arrange them to more advantage. Mean time, I would have every body to know, that the moment I myself was satisfied in this respect, I endeavoured to satisfy others.

Upon the whole, therefore, we are to follow those authorities which Cicero has made use of, that all matters of dispute are reducible to three states or issues, which are the points to be tried, Whether any thing happened? What happened? And what is the nature of the thing that did happen? Now, this division is warranted by nature herself; for if, in the first place, we allow that there must be a matter to be tried, that point must be first settled before we can determine the fact, or the nature of it. That, therefore, is the first thing to be tried. But though we are satisfied in respect to the existence of a thing, yet we may not know what the real fact is,

* This was with regard to the sutures of the head, which Hippocrates ingenuously owned he had mistaken; and, says Celsus elegantly, in this he acted like a great man, as he was; for a poor genius can take nothing from itself, because it possesses nothing.

till we try. When this point likewise is settled, then the nature of the fact comes to be examined, and we have nothing farther to try after settling those three points.

Having thus divided causes into three kinds, I now proceed according to the plan I have laid down.

CHAP. VII.

CONCERNING THE DEMONSTRATIVE KIND.

That this Kind, likewise, was practised in Pleadings at Rome—Concerning the Praises of the Gods—The Praise and Dispraise of Men—The Praise of Cities and Places.

I CHUSE to begin with that kind which consists of praise and reproach, though Aristotle, and Theophrastus, who followed him, seem to deny that it ever ought to intermingle in business, but that it is purely calculated to please the audience; and that it was called demonstrative, merely because of its ostentation. But the practice that has prevailed at Rome has even adapted this manner to business. For speeches in praise of the dead, frequently result from some public duty, and devolve upon magistrates by a resolution of the senate; and the encouragement or discouragement of a witness is a main part of the practice of a pleader. Nay, even the accused are at liberty to employ their panegyrists to speak in their praise; and the invectives that have been published, during competitions for public offices, against Piso, Clodius, and Curio, though full of reproaches, had their weight with our senate. I likewise admit that some compositions of this sort are merely ornamental, such as the praises of the gods and heroes of past times.

From

From this it appears that they are under a mistake, who imagine that an orator is never to speak but upon a disputable point. Is the praise of the Capitoline Jupiter, that perpetual theme of sacred disputation, a disputable point? Is it not to be treated in an oratorial manner? But as panegyric, when introduced into a real pleading, requires proof to support it; so the panegyric that is merely ornamental ought to carry with it probability. Supposing an orator is to advance, that Romulus was the son of Mars, and nursed by a she wolf, he is to make use of the following arguments in support of his celestial original: that, being thrown into a running stream, it did not swallow him up; that his actions were such as to render it not incredible that he descended from the god who presides over war; and that his cotemporaries readily believed he was received amongst the gods. Nay, in such subjects, certain circumstances may require to be treated in the manner of defence; as when an orator, when he celebrates the praises of Hercules, is to apologize for his changing habits with the Queen of Lydia, and, as we are told, his being obliged to perform the task she had appointed him.

But the business of panegyric is to amplify and embellish a subject, which generally happens to be a man or a god; yet it may regard irrational, nay, inanimate beings.

With regard to the gods, we are, in the first place, to express a due veneration for their divine nature, and for their several powers, and their inventions, by which they have profited mankind. The power of Jupiter is shewn in his government of the world; of Mars, in war; of Neptune, upon the sea. With regard to inventions, Minerva invented arts; Mercury, letters; Apollo, medicine; Ceres, agriculture:

and Bacchus, the culture of the vine. The orator is then to touch upon all their actions that have been celebrated by antiquity. Their offspring is likewise matter of panegyric; Latona, for instance, was the mother of Apollo and Diana. Some are to be extolled for being born immortal; others, for having attained to immortality by their virtue, which the piety of our sovereign,* who is the ornament of the present age, has effected.

The

* Sovereign.] An English bishop, (Parker) if I rightly remember, indulged the extraordinary and horrid humour of apologizing even for the conduct and character of Nero; and though I am far from thinking that he succeeded in his attempt, yet I cannot believe but that many of the horrid stories told of him have been exaggerated. The same, perhaps, was the case with several others of the first twelve emperors. Nor, indeed, is it any wonder, when we consider that every succeeding emperor rose upon the ruin of his predecessor; so that it became fashionable for historians, and other writers, to magnify every failing into a vice; and, perhaps, that which was only necessary severity, they have sometimes represented as enormous cruelty. Domitian, whom, according to Rollin and the Abbe Gedoyn, our author here ranks amongst the gods before his death, is generally looked upon as a monster of cruelty and inhumanity; and yet one scarcely knows how to reconcile the enormity of this character to some parts of his conduct. He expended immense sums in repairing the ravages which frequent fires had done to the libraries of the empire; and even Suetonius himself tells us, that, in the beginning of his reign, he not only was magnificent and generous, but was equally composed of virtues and of vices. He embellished the city of Rome with buildings that still do it honour. His administration of justice was strict and impartial: and he was fortunate in his generals. It is true, we are told of several murders which he committed; but we are to remark, at the same time, that several conspiracies, and some rebellions, were formed against him. As to the capital charge, of his assuming to himself divine honours before his death, it was a vanity he had in common with some of the best emperors: and really, if we consider the characters which the principal gods have in the heathen theology and mythology, it was no great compliment, even to a Domitian, to share in their honours. Mr. Rollin, the French editor, breaks out, with great indignation, against this passage,

The praise of men admits of greater variety; for, in the first place, it marks out the times that preceded them, and the times in which they lived; and, if the parties happen to be dead, the time succeeding their death. With regard to times before their birth, we have an opportunity to treat of their country, their parents, and their ancestors. This may be done in two manners; either by shewing how glorious it was in them to equal all the virtues of their blood; or to ennoble their descent by their merits. The circumstances, too, of the times that preceded them may be touched upon, if they have been distinguished by oracles, or auguries, foretelling the glories of the party; as when the oracle pronounced that the son of Thetis was to be more illustrious than his father.

passage, which he calls an impious piece of adulation to an abandoned monster of vice, who had commanded himself to be worshipped as a god. But the learned gentleman's zeal goes too far, and both he and the Abbe Gedoyn seem to me to have mistaken the sense of this passage, the original of which is; "Laudandum in quibusdam, quod geniti immortales; in quibusdam, quod immortalitatem virtute sint consecuti; quod pietas principis nostri, præsentium quoque temporum decus, fecit. "Now, in order to justify my translation of these words, we are to reflect that Domitian had erected a temple to his father and brother, two of the best princes the Romans ever had, which he called by the name of the Temple of the Flavian Family. This circumstance renders this passage plainly intelligible, which it is not, if we take it in the sense of the two Frenchmen. I should not have been, however, very solicitous of defending my author upon this head, had not Mr. Rollin, though a great admirer of Quinctilian, injudiciously, I think, attacked him. For great authors have complimented worse princes than Domitian was with immortality; and Mr. Rollin had every day before his eyes more gross pieces of adulation than he supposes Quinctilian to have been guilty of here, paid, by a whole people, to a prince (and in his life time too) who did a thousand times more mischief to mankind than ever Domitian did; I mean Lewis the XIVth of France, whom his subjects, at every turn, complimented with immortality; and his statues bore, and still bear, the modest inscription of Viro immortali.

With

With regard to personal praises, they consist either in mental, bodily, or external circumstances. The two latter are not so material, nor are they to be handled in the same manner. For sometimes beauty and strength admit of panegyric; and Homer celebrates Agamemnon and Achilles for both. Even defects may raise our admiration; for, in the Iliad, we admire Tydeus, though a little man, for being a great warrior. Fortune is a subject upon which a great many fine things may be said. When she smiles, as upon kings and princes, she is attended with dignity; when she frowns, as upon meaner men, the greater is the glory of counterbalancing by merit the weight of her indignation. As to external and accidental advantages, it is not the possessing them, but the using them well, that is matter of panegyric. For riches, power, and favour, as they enable a man to do a great deal, either of mischief or good, afford the most powerful trial of our dispositions, by rendering them either better or worse.

But the merit that arises from mental properties, though unvarying and perpetual, yet may be celebrated in many different manners. Sometimes the orator thinks it more beautiful to attend his hero through the several stages of life, and through the progress of his actions. He touches upon his dawning genius when a boy; his application, when a youth; and, when a man, upon his character, as composed of magnanimity, both in words and actions. Other orators think proper to divide their panegyric into the different kinds of virtues, by giving particular instances of the fortitude, the justice, the modesty, and other great qualities of their hero. We shall consider, as my subject leads me, which of these manners is preferable. We are, in the mean time, to remark, that it is more pleasing for the hearers to be informed of the hero's being the first,

first, or single, or next to single, in the performance of a great action. Unlooked-for and surprising events, arising from his virtues, add to our delight, especially if another person, and not he himself, reaps the benefit.

It does not always lie in an orator's way to touch upon the time succeeding the death of his hero, not only because the living are often the subjects of our panegyric, but because it seldom happens that a man dies, who deserves to have divine honours, senatorial decrees, and public statues, dedicated to his memory. To these I may add the monuments of wit and genius, whose merits have been established through a succession of ages. For some, Menander for instance, have owed more to the justice which posterity has done their works, than to that done them in their own times.

Children reflect glory upon their parents; cities, upon their founders; laws, upon their enactors; arts, upon their inventors; and institutions, upon their authors. Thus, Numa is celebrated for fixing the worship of the gods, and the Consul Publicola for being the first who lowered his fasces to the majesty of the people.

The same order, but by inversion, is observed, when reproach is the subject of the oration. Many have been disgraced by the meanness of their blood, while vice has rendered the nobility of others only more conspicuously despicable, and more eminently hated. The mischiefs that some are to commit, as was the case of Paris, have been foreseen, and foretold; and some have fallen into contempt, as Thersites and Irus are supposed to have done, by the defects and deformities of their persons. Others have, by their vices, disgraced the beauties given them by nature. Thus Nireus is represented by the poets as a coward, and Plisthines as a prostitute. The vices

of

of the mind are as numerous as its virtues; and dispraise, as well as praise, may be represented in two manners. Ignominy follows some men, even after life. Thus, the house of Melius, when he was dead, was demolished; and none of the posterity of Marcus Manlius were suffered to carry their family's name. The parents of wicked men are likewise objects of our detestation; and it brings infamy upon the founders of states, if they assemble together any sect of men that is pernicious to the rest of mankind. Such was the first broacher* of the Jewish superstition, and such were the favourers of the hateful laws of the Gracchi. The authors of any practice that posterity detest are likewise hated, such as was that of the lustful Persian upon a Samian† woman. With regard to the living, the opinion which mankind en-

* Broacher.] Commentators are inclined to believe that Quinctilian here means Jesus Christ and his followers. It is true, Suetonius mentions the Christians and the Jews as being the same sect; but if it is true, what most authors believe, that our author was intimate in the family of the Consul Clements, who was himself a Christian, and a martyr for Christianity, and that he was charged with the education of his sons, it is very unlikely that he should be so grossly ignorant, as he must have been, if in this passage he means the Christians. I am rather inclined to think that he means the Jews only, whose city had been lately razed by Titus Vespasian, and who were then held in universal detestation. Every one knows that the character given of the origin of the Jews by Tacitus, who was cotemporary with Quinctilian, represents them in the very light in which they are represented by our author, as being a people hateful to all the world, and hating all the world, and the refuge of all the scum of the earth: "Nam pessimus," says Tacitus, "quisque, spretis religionibus patriis, tributa & stipes illuc congerebat: unde auctæ Judæorum res. Et quia apud ipsos fides obstinata, misericordia in promptu, sed adversus omnes alios hostile odium." Add to this, that the epithet primus seems to characterise Moses, in opposition to Jesus Christ, whose followers were the very reverse of the character of the people mentioned here.

† Samian woman.] Commentators are not agreed upon the fact here alluded to, nor is it very material.

tertains of them ought to be taken as sufficient proofs of their characters; and their praise or reproach is justified by the public esteem, or disesteem, of their persons.

Meanwhile, Aristotle is of opinion that it is very material an orator should well know the nature of the company in which he praises or dispraises. The disposition of the hearers, indeed, and the received opinions of the public, must be confessed to be of great importance to persuade them that the virtues they most love reside in the subject that is praised; or the vices they chiefly hate in him who is lashed. Thus an orator may, beforehand, form a shrewd judgment concerning the success of his speech, because it will be no other than a continual chiming in with the favourite sentiments of his auditors, who will be charmed by his address, which, however, he ought to adapt, as much as possible, to the purpose of his subject. At Lacedæmon learning was held in much less esteem than at Athens; but the Lacedæmonians excelled the Athenians in patience and resolution. Some people account it virtuous to live by plunder, others are regulated by laws. The Sybarites, perhaps, hated temperance; the old Romans held luxury to be a capital offence. Individuals are affected in the same manner; the speaker is always most favourably heard who flatters the sentiments of his judge.

Aristotle lays down another rule (I think Cornelius Celsus has made an outrageous use of it), that we ought to take advantage of that affinity of words, which arises from an affinity that subsists between certain virtues and vices. Thus, we call rashness, courage; profusion, liberality; and avarice, frugality. This is a practice which a true orator, whom I always suppose to be a good man, never will give into,

into, unless he is invited to do it by some general utility that is to arise from it.

Panegyrics upon cities are of the same nature with those upon men. Their founder stands for their parent; antiquity gives them as much reverence as if they were coeval with the land they live in. Their actions are subject to praise, or dispraise. Now these particulars hold with regard to all cities; but some have peculiar properties, arising, for instance, from the situation or strength of the place. Their citizens grace them as children do their fathers. Their public works admit of encomiums upon their dignity, their utility, their beauty, and their founders. Dignity is applicable to their temples; utility, to their walls; beauty and the founder, to both. Particular countries too admit of encomiums; thus Cicero praised Sicily. Here we must endeavour to unite beauty with beneficence. Beauty is applicable to their coasts, their plains, their skies; beneficence, to the purity of their air and the richness of their soil. There is likewise a general kind of penegyric upon words and actions. In short, every thing admits of it in some degree or another. Authors have written encomiums upon sleep and death; and some physicians have written the praises of certain kinds of food. Upon the whole, therefore, as I did not admit this panegyrical kind could be exercised upon no other object but virtue, I think it falls into the division of quality; nay, all the three states I have mentioned may be there united; and Cicero has observed that Cæsar did unite them all in his invective against Cato. The whole of it, however, has something in it resembling the deliberative kind, because what is praise in the one operates as persuasive in the other.

CHAP.

CHAP. VIII.

CONCERNING DEBATE, BEING THE PERSUASIVE OR DELIBERATIVE KIND.

That Utility is not its only Object.—How it ought to set out and proceed.—Three Points to be considered in Persuasion; first, the Subject; secondly, the Audience; thirdly, the Speaker.—Concerning Declamations in the Deliberative Kind.—Of the Style required to persuade.

It is surprising that the deliberative kind of speaking should, by some, be confined to utility only. If there is any one point to which it ought to be confined, I am, with Cicero, of opinion that the chief province of this kind is dignity. I make no doubt that they who are of the other opinion will plead that specious sentiment of the stoics, which holds nothing to be profitable that is not virtuous. This doctrine would be indisputable, were every assembly, where a debate happens, made up of men of wisdom and virtue. But the ignorant, especially the people before whom we are obliged to plead, consist of an undiscerning multitude; and therefore we are obliged to treat of virtue and utility as being separate qualities, that we may accommodate ourselves to their vulgar notions: for some amongst them are persuaded that a thing may be virtuous, and yet fall short in point of utility; while others approve of what is indisputably dishonest, because it is recommended by utility: for instance, the Numantine league, and the disgrace of our armies at Caudinum.

Nay, the kind I now treat of is not even comprehended under the state of quality which I mentioned, the particular province of which is to treat of

of what is virtuous, and what is profitable. For very often a doubtful matter may be started out of that head, and sometimes a definition may be needful to clear up the question; sometimes a knotty point of law may arise, especially if the business is of a private nature, and turns upon its legality, or illegality. I shall soon fully treat of matters of doubt and conjecture; but with regard to definitions, we have an instance of one in Demosthenes; whether Philip should make them a present of, or give them back, the island of Halonnesus? We have another in Cicero's Philippics, when he defines the difference between a war and an alarm.* Nay, farther, is not the question arising from the statue of Servius Sulpitius of kin to those handled at the bar, when he disputes, whether statues are to be erected to those† only who perish in their embassies by a violent death?

Therefore the deliberative, or, which is the same thing, the persuasive kind, (as in the two cases I last mentioned) in deliberating upon future measures, reviews the past. It consists of two purposes, per-

* Alarm.] Orig. tumultus. M. Antony having provoked the senate to break with him, a debate arose in it, whether they should declare the hostilities they were to enter into, a bellum, or a tumultus; a war, or an alarm. Cicero was for the former.

† Orig. non illa similis judicialium quæstio de statua Servii Sulpitii, an iis demum ponenda sit, qui in legatione ferro sunt interemti?] I am inclined to suspect this reading, which I should like better, if, instead of demum, we were to read solum. The case was this: Servius Sulpitius, when he was very much indisposed, and pretty aged, was sent, in the winter time, upon an embassy to Marc Antony, in which he died. Pansa made a motion in the senate for decreeing some special honour to his memory; and Publius Servilius being asked his opinion, gave it for a tomb to be erected for him, but not a statue, because the Romans erected statues only to those who were killed upon their embassies. Cicero, who spoke after him, was of a different opinion, because he thought that Sulpitius was as much killed by his embassy, as if he had fallen by the sword; and the question was carried for his opinion.

suasion

suasion and dissuasion. It does not always require so formal an introduction as pleadings upon matters of law do; because, whoever applies for advice,* is supposed to be willing to take it. It ought, however, to begin with some kind of an introduction, without breaking into the subject in a random, fanciful manner; because, in all subjects there is somewhat which the nature of the thing points out to stand first.

When we speak before the senate, or an assembly of the people, we are to observe the same method as at the bar, by endeavouring to prepossess a majority of the hearers in our favour. This is done even in panegyrics, when we aim at praise only, and not profit. It is true, Aristotle, with some reason, thinks that we may often borrow so much from the manner of the bar, as to introduce our speech from somewhat relating to our own person, or that of him who differs with us in the debate; sometimes by exaggerating, sometimes by diminishing, the importance of a matter. In arguments of a demonstrative nature chiefly, he allows more latitude for the introduction, which he thinks may be wide of the subject; as was the practice of Isocrates, when he celebrated the praises of Helen. He is likewise of opinion that it may relate to a subject which borders upon our own; as when the

* Advice.] I shall not take up my reader's time in proving that the English words, deliberation, demonstration, counsel, and several others I could name, have sometimes very different ideas annexed to them from what the same words in the Latin import. Suasio, for instance, or suadere, I have translated persuasion, as being the most general word, and, therefore, the safest I could hit upon; but it is plain, from this passage, that by it our author means advising, or counselling. I am farther to observe, that, properly speaking, the deliberation which he mentions here, sometimes signifies what we call debate, that is, when an equal speaks to his equals.

same

same orator, in the same panegyric, complains that the world pays more honours to the beauties of the body than those of the mind. And Gorgias, in his olympic oration, praises the founders of that meeting. Sallust* seems to have followed this manner, for his introductions to his Catilinarian and Jugurthine wars have no relation to his history. But I now return to the persuasive, or advising part, in which the introduction, if we make use of any, should be short, and we should confine ourselves to the marking it with an initial, or a bare commencement.

As to stating the case, which I call the narration, there seldom is occasion for that in a matter of private debate, because every one present is acquainted with the subject under consideration. Many particulars, however, not intimately connected with the subject, may be necessary to be explained. In speeches before assemblies of the people, it is generally necessary to give a circumstantial detail of the affair, so as to move their passions, which is the great point to be considered in such assemblies.† In order to do this, we are frequently to rouse, and to calm, their resentments; we are to work upon their fears, their wishes, their hatred, and to touch

* Sallust.] Our author seems to leave it a little doubtful, whether Sallust is justifiable in this practice. I think he is not; and I dare to say Cicero would have thought the same thing. "The beginning, says he, (De Oratore, l. ii. c. 80.) ought to be so connected with the subsequent part of a speech, as not to appear like the flourish of a musician, a thing detached, but like a proportionable member, of a piece with the whole body. For some people, after they have dispatched this premeditated part, make such a transition to the rest of their discourse, that they seem to demand that the audience should suit themselves to their fancies. An orator, then, ought to treat a prelude, not as the Samnites do their spears, which they brandish before they encounter, though they do not use them in the fight; for he ought to fight armed with the very sentiments he used in his prelude."

† The original here is very doubtful, but the meaning seems to be as I have expressed it.

every

every spring of their passions. Sometimes we may have occasion to awaken their compassion; when we endeavour, for instance, to persuade them to send relief to a city that is besieged, or when we deplore the ruin of a state in alliance with Rome.

Now, authority has a great influence upon public deliberations. The man who endeavours to bring over all mankind to his opinion, in every consideration that is either profitable or virtuous, should endeavour to excel all others in the characters of wisdom and goodness. In judiciary matters, an orator is commonly allowed some indulgence for his own private affections; but in public questions, all he says is supposed to be influenced by nothing but the public good, and his own conscience.

Many Greek writers, indeed, have considered all the deliberative division of rhetoric to belong to public harangues, and have confined it, nearly, to matters of government. Cicero himself is of that opinion; and he recommends the study of two particulars, namely, the strength and the morals of a state, to all who are about to speak concerning peace, war, wealth, public works, and revenues; that the speaker's arts of persuasion may be derived from an intimate acquaintance, not only with the very thing he speaks of, but with the character of his hearers. I am for giving a larger scope to the practice of eloquence, because of the vast variety, both of subjects and persons, that public deliberations admit of.

In persuading, or dissuading, therefore, three things are chiefly to be considered; the subject of the deliberation, the character of those who deliberate, and that of the person who speaks.

As to the subject of the deliberation, we are to suppose it either practicable, or not practicable; if it is impracticable, the whole or the chief stress of

the reasoning ought to turn upon that. For it often happens, that we first enquire whether a measure is proper, supposing it practicable; and then we prove it to be impracticable. But when the last is our business, the state of the question becomes conjectural. For instance, Whether it is practicable to cut through the Corinthian isthmus? to drain the Pontinian fens? To make a harbour at Ostia? Or whether Alexander could find another world beyond the ocean? But sometimes a matter, that we know to be practicable, may turn upon conjecture. For instance, Whether the Romans can conquer the Carthaginians? Whether Hannibal will return? Whether Scipio should carry over his army to Africa? And, Whether the Samnites will continue in their allegiance, if the Romans shall lay down their arms? Certain events are not only possible, but probable; and then the question will turn upon the difference of time, place, and manner.

When there is no room for conjecture, other considerations fall in our way. In the first place, we examine into the nature of the affair itself in question, or how it is circumstanced and attended. For instance, when the senate debates, Whether it shall vote a fixed pay for the army? Here the nature of the measure, abstracted from all other considerations, is the point to be debated. With regard to circumstances, they are of two kinds; whether a measure ought to be followed; for instance, whether the senate is to give up the Fabii to the Gauls, who threaten to make war? Or whether a measure is not to be pursued; as when Cæsar deliberates, Whether he ought to march against the Germans with his army, who are so dispirited that the soldiers are making their testaments? Here each measure to be debated admits of a double consideration. In the first instance, we are to consider the threats of the Gauls; and

and then another consideration arises, whether the three persons sent in the character of ambassadors ought to be delivered up, for having, against the law of nations, entered upon hostilities, and killed the prince with whom they were commissioned to treat. With regard to the other instance, the single point of consideration with Cæsar is, doubtless, the consternation of his soldiers; and yet, besides this, it is possible a consideration may arise, Whether he ought to carry an army into Germany. For we always speak first to the point that is in question, abstracted from all circumstances attending it.

Some writers have divided persuasive considerations under three heads; those of virtue, utility, and necessity. As to the last, I think it improperly introduced. For when we are under compulsion, we possibly may be under a necessity of suffering somewhat, but we can be under none of acting. Now the single point of our deliberation is action. But if we are to give the term of necessity to that state in which men are placed, through the fear of suffering somewhat that is more dreadful, then the consideration will turn upon utility. For instance, when a handful of men are besieged by a great army, and are distressed both for food and water, they deliberate about surrendering the place. This you call necessity, because they must either do it, or they must perish. But this very alternative shews that it is not necessity, because they have it in their option to perish. Have we not the instance of the Saguntines, who chose to perish rather than surrender; and the Opiterginians, who rather than yield to their enemies, put each other to death on board their ships. In all such cases, therefore, the sole consideration is utility only, or else it lies between utility and virtue. Supposing a man wants to have children to inherit his estate, would he not be under a neces-

sity of marrying? Doubtless he would. But there can be no consideration here, because such a man has no alternative, and will be under a necessity of marrying. Therefore, in a case of necessity there is no room for deliberating, any more than there is in a case of impossibility. For all deliberation implies doubt; if therefore there is a third head of persuasion, I shall chuse to call it that of possibility, which is indeed an uncouth term, but is the only one I can think of.

There is no room for me to shew that every case of deliberation does not admit of all these three parts, yet most writers increase their number, by reckoning things as parts which are only subdivisions of parts. For right, justice, piety, equity, clemency, and other virtues of the same kind, come under the head of honesty. In like manner, under the head of utility, we debate whether a measure is practicable, great, agreeable, or safe; all which considerations are matters subject to be debated. Such a measure is profitable, but we are to consider at the same time, whether it is not difficult, mean-spirited, disagreeable, or hazardous?

Meanwhile, some are of opinion for sometimes making the agreeableness of a measure a head by itself. For instance, when the building of a theatre, or instituting public diversions, comes under consideration. But I cannot suppose any person to be so abondoned to luxury, as to think that pleasure can ever be the sole business of persuasion. Somewhat of more importance must necessarily introduce the speech; the honour of the gods is a sufficient reason for instituting plays; public diversions admit of apology from the benefit of relaxation from toil; for the advantage of more decent and convenient accommodations for the people, in order to prevent broils and uproars; while, at the same time, religion

religion too mixes in the consideration, since we may call a theatre the temple, as it were, of the festivals there celebrated.

Now it often falls in our way to recommend a contempt of profit in favour of virtue. For instance, were we to advise the Opiterginians I have already mentioned, not to surrender themselves to their enemies, though certain death is the consequence if they do not. We sometimes may have occasion to prefer a profitable to a noble measure. For instance, were we, as happened in the Punic war, to persuade our countrymen to arm their slaves for their defence. But here we are not to shock their ears with a downright avowal of the dishonour of this measure; for we can palliate it by pleading, that nature has made every man a freeman; that all mankind is composed of the same materials, and who knows, slaves as they are, whether they are not descended of noble ancestors? Where the danger cannot be palliated, we are to throw in other considerations; such as, that if the citizens of Opitergium shall surrender themselves, they must perish by a more cruel death, either by their enemies breaking the capitulation, or (which is most probable) by Cæsar remaining victorious.

But when two measures seem very averse to each other, the best way is to make use of such terms as may incline them to some seeming reconciliation. Utility may be exploded upon the principles of those who not only prefer virtue to utility, but deny that utility can exist without virtue. On the other hand, what we term virtue, others term (more plausibly than truly, indeed) vanity, ambition, and folly. Besides the opposition of utility to inutility, one utility may be opposed to another, and one inutility to another, that our choice may be determined by the greater good in the one, and the smaller evil in the

the other. Nay, this manner may still be enlarged to our view; for three points of deliberation may arise. Thus, Pompey deliberated whether he should fly to Parthia, Africa, or Egypt. Here the question is not, Which is the better of the two, but, What is the best of three measures? The same holds of the opposite consideration.

In deliberations of this kind, we can have no doubt of a measure that appears absolutely in our favour. For where that is the case, the consideration of one measure cannot contradict the other, and as there is no room for doubt, there can be none for deliberation. Upon the whole, therefore, the business of persuasion lies almost wholly in comparing one circumstance with another. Sometimes we are to consider the purpose we aim at, and the means of obtaining it, so as to form an estimate whether there is more utility in our compassing the end, than there is danger in our pursuing the means. Sometimes a consideration of utility may introduce a consideration of the juncture. The measure, for instance, may be proper, but the juncture improper. A consideration of place too may arise; This is no proper place for such a measure. Persons too are to be considered, Such a thing is improper for me—I am not to oppose such a one. We may say the same of the manner, and of the proportions, Such a manner is improper—Such an express may be dangerous.

But we often have occasion to consult what best becomes persons; a material consideration! both with regard to the man who consults, and the man who is consulted. Therefore, though precedents have great weight in determining our deliberations, because mankind are very readily won over to a measure by having an example before their eyes of the same kind, yet ought we carefully to examine the characters of the parties, both in the example and

and the application of it. The same measures may fall under the deliberation of men very differently disposed, and different circumstances may attend them. The parties may deliberate either in a collective capacity, or as individuals. When in the former, it is of great consequence whether the senate or the people is to deliberate, whether the Romans or the Fidenates, the Greeks or the Barbarians: when the latter, whether we are to persuade a Cato or a Marius to stand for public employments; whether in military matters we are to follow the advice of a Scipio or a Fabius. Next we are to regard the sex, the dignity, and the age of parties, but the most material difference consists in their dispositions.

Now there is no difficulty in persuading the virtuous to follow virtuous measures. But if we are to plead for such measures before men of abandoned principles, we are carefully to avoid all appearance of reproaching them for the contrariety that there is between the measures and their character. For we are not then to think of winning their assent by expatiating upon the beauty of virtue, which never comes into the thoughts of such men; but we are to work upon them by the glory and the popularity that will attend their pursuing such a measure; and, if they look upon those but as empty sounds, we are then to lay before them the great profit which will thereby arise to themselves, and to magnify the dangers which may attend their doing otherwise. For the more worthless man is, the more susceptible he is of fear; nay, I am not sure whether the generality of mankind are not more influenced by the dread of danger than the hope of advantage; so much more easily and naturally is mankind in generally struck with the notion of what is mean, than of what is noble.

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We are sometimes likewise employed in persuading even worthy men to measures that are not quite creditable,* and in giving counsels that are merely interested to men of but very indifferent morals. I am well aware what reflection the reader may be ready to make upon this passage. Do you, Quinctilian, then recommend such a practice? Do you think it defensible? Here I will make use of Cicero's words in his epistle to Brutus, in which he mentions many propositions, which any man of virtue might have made to Cæsar; "Shall I," says Cicero,† "act up to the character of a good man, if I counsel Cæsar to such measures? I shall not; for every man who counsels another ought to have nothing in his eye but the utility of the party who consults him. But those measures are right in themselves. No doubt they are. But

* Creditable.] I am somewhat of the opinion of Turnebus, that the practice here mentioned is not very consistent with the character our author gives of a good orator, who, he says, ought to be a man of virtue. At the same time we are to reflect that Quinctilian is no stoic, and therefore he might, consistently enough with himself, think that a partial evil might be indulged, in order to obtain a general good.

† As this epistle of Cicero to Brutus is now lost, it is difficult, if not impossible, to ascertain which are the words of Cicero, and which of Quinctilian, in this passage. I follow the edition of Stephanus, printed at Paris, 1542, which I think to be of the greatest authority; Burman, and the rest of the Dutch commentators, which is generally the case when there is any difficulty, not saying a word of the matter. There is, in the 15 epist. l. 7. of Cicero's epistles to Atticus, an expression which might be a great deal to our author's purpose, for he there says, That in a council held by the consuls and other senators, to deliberate upon the measures they were to take, in regard to Cæsar, Cato himself declared that he thought it much better to submit to Cæsar, than to fight with him. Cato, says he, enim ipse jam servire, quam pugnare mavult. Upon the whole, however, I am inclined to believe, that the Cæsar mentioned here by Quinctilian, is not Julius, but Augustus Cæsar, nor do I remember that this passage has ever been considered by Dr. Middleton, or any of Cicero's apologists.

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where persuasion is the only aim, rectitude does not always fall under our deliberation." But as this is a matter of great importance, and reaches farther than my present subject, which is that of persuation, I have given it a place in the twelfth, which is the last, book of this treatise.

Meanwhile, I am not for having any thing done in a scandalous manner. But these are questions of a moral kind, and they may be discussed in schools, and become imaginary themes of declamation. Yet still we ought to be acquainted with the ways of the wicked, that we may the better know how to persevere in those of the virtuous.

It is proper, however, that I should here caution my reader, when he wants to persuade a good man to an immoral action, not to imitate certain declaimers, who advised Sextus Pompeius to turn pirate, merely because the profession was profligate and cruel. No, he never is to recommend a measure as being immoral; nay, he is to palliate the most disagreeable proposal with the colour of virtue, even when he has to do with wicked men. For no man is so wicked as to wish to appear wicked. Thus Sallust introduces Catiline himself declaring that he was prompted to the enterprise he had attempted, "not by wickedness, but by resentment." Thus Varius makes Atreus say,

> Not from my choice, the ills I act proceed,
> For dire necessity compels the deed.

Now, while men are tender of their characters, they ought to be still more careful of a decent appearance. Therefore, were we to counsel a Cicero to apply to Antony for pardon, or to embrace the terms of life that Antony offered him, by burning his Philippics, we are not to mention the fear of death as a motive for his compliance; for if he is impressed

impressed with such a fear, it will operate without our suggesting it; but we are to conjure him to preserve his life for the service of his country. Such is the request that gives him the fairest apology for such a compliance, nor will he blush to live upon such terms. In like manner, were we to persuade a Cæsar to size the sovereignty of his country, we are to affirm that she must be ruined under any other form of government. For when a man deliberates upon executing a wicked measure, his sole consideration is, how he may best palliate his wickedness to the eyes of the world.

The character of the person who counsels is likewise of great importance; because he can claim regard to the former part of his life, if it has been spent with honour; to his blood, if it is noble; to his age, if it is venerable; to his fortune, if it is illustrious. Where such is the case, he will take care to make his sentiments correspond with his character. If all those considerations are the reverse of what I mention, he will speak in a more submissive manner. For what is becoming freedom in the one, is disagreeable impertinence in the other; the former is respectable by his authority, and the other scarce tolerable with all his abilities.

I think it is very difficult to execute to advantage speeches in assumed characters, because that person who does it is obliged to suit himself to the character, as well as his pleading to the rules of eloquence. The characters of Cæsar, of Cicero, and of Cato, require to be supported in quite different manners, because each of them has a different manner of persuading. Now, this exercise is of the most useful nature, both because it forms us to a double perfection, and because it is of the greatest service to poets and future historians; nay, in an orator it is dispensable. Because many orations have been

composed both by the Greeks and Latins, which have been delivered by others than their authors, and which were accommodated to the station and circumstances of life of those who spoke them.

Did Cicero* express the same sentiments, or assume the same character, when he wrote for Pompey, as he did when he wrote for Appius and other noblemen? Did he not suit himself to each one's fortune, dignity, and exploits? Did he not give to these a language that made them more than speak, by presenting them to our eyes as realities? So that though he made his friends speak better than they could have done, yet still he never suffered them to depart from their own character; for his composition appeared to be their's. A deviation from the character we assume is as blameable in a speech, as is a deviation from the purpose and the fact to which we speak. Lysias, therefore, is celebrated for the propriety with which he accommodated himself to the characters of illiterate persons, when they were to deliver orations of his composing.

Upon the whole, therefore, it ought to be a main consideration with those who declaim, to suit themselves to the character they assume. Very few cases happen in which a declaimer is obliged to speak as an advocate; they generally speak in the characters of sons, rich fathers, sour old men, or in the charac-

* Cicero.] Several circumstances in Cicero's private history mention his composing speeches for others. See his epistles to Atticus, l. 13, letters 37 and 48; but I do not recollect that he ever composed any for Pompey, who was himself no mean orator. Meanwhile there is reason to believe, from the many disgusts he had with Pompey, which he expresses without any reserve, that if he had composed any speeches which Pompey delivered, he would not have been backward in throwing that circumstance into the mighty sum of ingratitude with which he so often taxes that great man. Quinctilian, in this passage, therefore, perhaps points at the oration for the Manilian law, and the other orations, in which he celebrates Pompey's praises, and draws his character.

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ters of gentleness, avarice, superstition, fear, or flouting; so that comedians, when acting upon the stage, have scarcely more parts to sustain than orators have in declaiming. All such parts may be called prosopopœiæ, which I rank as a subdivision of the persuasive part, because there is no difference between them, but in the assumed character.

Historical facts,* however, sometimes are agitated under real names by way of prosopopœiæ. I am likewise sensible that historical and poetical themes are set by way of exercise to young gentlemen; for instance, the speech of Priam when he supplicates Achilles, or the example of Sylla resigning the dictatorship before an assembly of the people. All these, however, may be reduced into the three divisions of causes which I have already laid down. For we use to rank the business of intreating, declaring, rendering an account, and the other circumstances I have already mentioned, under the judicial, the deliberative, or the demonstrative head, without any fixed rule, other than the nature of the case required. Very often, however, we introduce a fictitious character, which we ourselves assume and organize. Thus Cicero, in his pleading for Cælius, introduces Cæcus Appius reproaching Clodia; and her brother Clodius talking coolly with her upon the subject of their amours.

Sometimes in schools matters of debate are laid down, that approach more to the controversial, than the deliberative manner, but partake of both. Thus, in the presence of Cæsar, it was debated whether Theodotus† should be punished. Now this consul-

* Facts.] I have hear translated the original, though it is omitted in Mr. Rollin's edition, for I think without it the sense must be incomplete to an English reader.

† Theodotus.] He was tutor to young Ptolemy, King of Egypt, and persuaded him to put Pompey to death.

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to trials, however, and measures, I think that the manner of treating them ought to be accommodated to the nature of the question. For it is easy to perceive that the Philippics of Demosthenes are distinguished by the same excellencies that mark the best pleadings in courts of justice. The opinions that Cicero delivered in the senate, and his harangues before the people, are as rich in eloquence as the speeches he made in impeaching or defending parties. His senseupon the persuasive branches of eloquence, as we find it in his Oratorial Partitions, is, " Now, says he, all this kind of pleading ought to be plain, but weighty, embellished by sentiments, but not over-loaded with words." It is generally agreed, that examples are never more seasonably applicable, than they are upon this head of deliberating upon public measures; because the present and future commonly reflect what is past, and experience, in some measure, supplies the evidence of reason.

As to the length or shortness of such discourses, they depend not upon the division under which the subject falls, but upon its quality. With regard to pleading upon measures, the question agitated is generally plain and simple, but pleadings in a court of justice often turn upon points of less consequence.

If any man shall chuse, rather than grow grey in studying the quibbles of rhetoricians, to read not only orations, but histories, he will soon be sensible of the truth of what I advance here; for in history, public debates and deliberations generally employ the powers of persuading or dissuading. He will find, in matters of public deliberation, speeches without blunt, abrupt beginnings; he will find pleadings full of spirit and fire; in both kinds he will meet with compositions in which the style is suited

suited to the facts; nay, he will meet with instances where pleadings in the courts of justice are more abridged than speeches upon public measures.

In many of such instances he will perceive them free from the blemishes that generally disgrace our declaimers, who coarsely rail against their opponents, and speak in such terms as if they were flying in the faces of those who hear them; so that they appear to be rather scolding than pleading. Young gentlemen ought to apply to themselves what I now say, lest they should fall into a manner of exercise which will be improper when they come to speak upon real causes; and thereby spend whole years upon what they must unlearn. In due time, if their friends should apply to them for advice and assistance, if they should have occasion to deliver an opinion in the senate, if their sovereign should call upon them for a consultation, experience will then teach them more than they dare to risque upon the strength of rules.

CHAP. IX.

CONCERNING AN ORATOR'S PRACTICE AT THE BAR.

As to an orator's business in a court of justice, it is various and extensive; but, in general, it consists of two duties, that of attacking, and that of repelling; and these, according to most authors, are managed by means of an introduction, or outset; a stating the case, or a narrative; the proof, or evidence in support of the case; a refutation of what is advanced by the opposite party; and a peroration, or a winding up of the whole. To these some have added a partition, a proposition, and a digression. As to the two first, they fall under the head

head of the proof. But you must necessarily, say they, at least propose what you intend to prove. No doubt of it; and are you not, necessarily, to draw your conclusion after proof? Why, therefore, should not the conclusion too be a head by itself, if the proposition is? As to partition, it is no other than a species of the division of a pleading, or oration, and it is equally diffused through the whole of all its constituent parts. As to the excursion, or, as it is more commonly called, the digression, if it loses sight of the point in question, it can be no part of the cause; if it relates to the point in question, it then serves to strengthen and to embellish those parts of the cause from whence it digressed. For, if whatever relates to a cause is called part of a cause, why are not proofs, comparisons, maxims, passions, and examples, termed parts likewise? Meanwhile, I can by no means agree with those authors, who, with Aristotle, throw refutation out of the division I have already mentioned, because, say they, it is subordinate to proof. Now, proof establishes, but refutation destroys. Aristotle likewise is somewhat singular in thinking that the proposition, and not the narrative, ought to succeed the introduction, upon a supposition that the narrative is only a species of the proposition; and that the former is not always, but the latter always, and in all cases, is necessary.

I do not, however, pretend that a speaker is to digest in his own mind all the parts of a pleading which I have laid down, in the very same order in which he is to speak them. No, his first business is to consider the nature of his cause; upon what point it turns; how he can manage it to the best advantage; and where he may be pinched. He then is to examine what he is to establish, and what he is to refute. He then is to consider how the

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case is to be stated, for the state always introduces the proof; and it is necessary, in order to manage that to the best advantage, to be fully sensible of its whole extent and force. A speaker's last business is to consider in what manner to win over the affections of the judges. For without accurately examining every circumstance relative to the cause, it is impossible for a pleader to be certain into what disposition he ought to work his judge; into severity, or gentleness; into resentment, or calmness; into inflexibility, or clemency.

I am, however, far from approving of those who think that the introduction ought to be the last part of a pleading which an orator is to compose. For, before we begin to speak or to write, we ought to collect together all our materials, and to know exactly what purpose each is to serve, in order to begin with such as we shall first have occasion for. No painter, or statuary, paints, or moulds, from the feet upwards; neither, in any art, are we to leave off where we ought to begin. Yet that must be the case with the orator, who does not take time to compleat the whole fabric of his pleading. But must we not be misled by so preposterous a practice? We therefore ought to arrange in our own minds the materials according to the order I have prescribed, and to compose them in the order we are to deliver them.

CHAP. X.

CONCERNING THE DIFFERENT KINDS OF CAUSES IN COURTS OF JUSTICE.

I AM next to observe, that all causes between a prosecutor and a defendant consist either of one or more facts. The former is called a simple, the other a complicated

a complicated cause. A matter of theft, for instance, or adultery, hinging upon a single fact, constitutes a simple cause. An impeachment upon corruption may consist of several facts of the same nature. An impeachment upon sacrilege, and upon murder at the same time, consists of several facts of different natures. Causes of this complicated kind do not now happen in courts of justice, because the prætor, or chief magistrate, takes cognizance of them, according to the law that is provided in each case. But such causes often come before the sovereign and the senate; and the time has been when they came before the people. Private causes use to have a single judge who determines according to the several forms and rules which he has for his direction. The nature of such causes does not alter by one man being prosecuted by two persons upon the same fact and for the same purpose; or by two being prosecuted by one; or by several parties being concerned in the same suit, which sometimes happens in cases of wills and succession. For however the parties may be multiplied, yet the nature of the cause is the same, unless the qualities of the parties introduce into it some specialities.

A third and a different kind of causes is called comparative; and a cause may be of such a nature as to require a comparison to be part of it. For instance, after other points were pleaded before the centumviri, the question was agitated, "Which party best deserved the succession?" But it seldom happens that other public courts of justice try comparative cases singly, such as divinations, which turn upon a dispute between two parties, "Which has a right to be prosecutor in a cause?" Questions of the comparative kind often happen between informers, "Which party has deserved the reward?"

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Some add a fourth kind of causes, that of counter impeachments, or recriminations; but others comprehend it under the comparative kind; as likewise the cases of cross-bills, which very often happen, and may be of two kinds; one, where each party accuses the other of the same crime; the other, where the crimes alledged by each party against the other are different. The same observation holds with regard to suits.

Upon the whole, when we have throughly examined into the nature of the cause, we are then to consider, whether we are to deny, or to justify, the main matter in question; whether it is to be distinguished under another appellation, which will alter its quality; or whether it may not be set aside by some informality in the process. One or other of these must determine the state of a cause.

CHAP. XI.

CONCERNING THE CONSTITUENT PARTS OF A CAUSE.

HAVING now determined in what manner to proceed, we are to consider, according to Hermagoras, what is the point to be tried; the means of defence; upon what principle the cause is to be adjudged; and upon what it rests.

Every point to be tried is of a general kind, when two or more sides of the question can be plausibly maintained. With regard to judicial matters, they are to be considered in two lights. When the point litigated is said to contain several questions, then all those questions are understood to be its subdivisions; this is the first. The second light in which we are to consider it is, when the essence of the main question is expressed. It is of this last I am now to treat,

because it gives rise to the state of the question, whether a fact happened; what that fact is, and whether it is to be justified. Hermagoras and Apollodorus, and many other writers, call such matters questions. Theodorus calls them general heads, and their subdivisions, special heads.

Now it is agreed by rhetoricians that one question may arise from another, and that a species itself admits of subdivision; the question, therefore, or the point to be tried, is the chief constituent part of a cause.

The means consist of the manner in which the charge of an evident fact is to be defended. I shall here bring an example, for why should I seek any other, since almost all authors have used it upon this occasion? The fact is undeniable that Orestes has killed his mother: the state of the quality of this fact turns upon the defence he makes, that he did it justly. The question arising from this is, the justice of the fact: the means of this defence are, his mother Clytemnestra's having murdered her own husband, who was the father of Orestes. Next, is the principle upon which the cause is to be adjudged, and that is, the lawfulness of a son's killing a mother, even though she is criminal,

One cause may likewise spring from another; thus, from the cause of Orestes' killing his mother, it may be said for her, that she was justified for killing her husband, because he had sacrificed her and his innocent daughter, and had introduced into his family a captive, who shared his bed.

It is likewise possible that one question may suggest several means or arguments for defence; thus Orestes may alledge his being impelled by the oracles as another cause for killing his mother. Now every means of defence requires a separate principle of judging; the principle required here is, whether Orestes

Orestes ought to have obeyed those oracles? But in my opinion, several questions and several principles of judging may belong to one cause. Thus, a man, after killing his wife who had defiled his bed, afterwards met with the adulterer, who had escaped, and killed him in the forum. Here is but one cause, and that is, a person's being an adulterer. The questions and principles of judging arising upon this are, whether it was lawful to kill him at that time, and in that place? But, as when several questions arise, each of which requires to be separately stated, the state of the cause to which they all relate is still the same, so the principle of judging is the principle which is to direct the decision.

As to the fundamental point, which Cicero terms the strongest argument for defence, and the most proper for guiding the judgment, some think that it ought to determine the whole trial; and some, that it is the most solid ground upon which a judgment can be formed.

It is not, however, every cause that requires a fact to be stated or accounted for. For when the fact is denied, how can it be accounted for? But when the fact is admitted, and accounted for, some think that the principle of judging ought to be separated from the question, and this is Cicero's opinion, in his rhetorical treatises and his oratorial partitions. For where the case rests upon a conjectural question, where a fact does, or does not, exist, the principle of judging is then the same with the question, because the main question is the decisive point in the same cause. But when the quality of the fact is the point in dispute, Orestes, for instance, killed his mother; can that fact be justified, or can it not? The question here rests upon his justification; but this is not instantaneously to be judged. How then; She, says Orestes, had killed my father. But that does not

not justify you in killing your mother. But it does justify me, replies the other. Here rests the principle of judging. As to the fundamental of this cause, take it in the words of Cicero: let us suppose that Orestes alledges in his defence, that his mother was so wickedly and unnaturally disposed towards his father, himself, his sisters, his country, and the honour of his blood and family, that her children were justified in being the principal agents to put her to death. Other examples of this kind are likewise brought. Whoever has spent his paternal estate, loses the privilege of assembling with the people. But here is a man who has spent it upon public works. The question then arising is, whether every man that has spent his paternal estate ought to lose that privilege? But the principle that is to direct the judgment rests upon the point, whether a man who has spent it in that manner ought to lose it? In the case of the Marian soldier who killed the tribune, Caius Lucius, his superior officer, while he was endeavouring to violate his body; the question is, whether he killed him lawfully? The mean of defence is, that the tribune endeavoured to dishonour the defendant's body. But the point that is to direct the judgment is, is the soldier himself to take the vengeance, or is it lawful for him to kill his military tribune?

Some think that the state of the question, and the principle of judging, ought to be quite distinct considerations. A question, for instance, arises upon the quality of an act. Is Milo to be justified in killing Clodius? But the principle which is to direct the judgment is merely conjectural, whether did Clodius way-lay Milo? They add, that a cause often slides into another matter which is foreign to the question, and even that matter is to be judged upon. I can by no means be of that opinion. The question,

question, for instance, whether all who have spent their paternal estates are to be debarred from assembling with the people, is a point that is to be adjudged. But then the question and the judgment are not distinct considerations; but several questions, and several points to be adjudged, occur in the cause. Let me ask, in the cause of Milo, does not the conjecture upon which it turns influence the quality of the fact? For if Clodius way-laid Milo, it follows that Clodius was justly put to death.

But if an orator falls into a matter that is digressive from the main question, yet still the question is the point that is to determine the judgment. Even Cicero is a little inconsistent with himself upon this head; for in his rhetoricial treatises, as I have observed before, he follows Hermagoras. But in his topics, he thinks that the point to be decided is, the difference between the two contending parties, under the circumstances of the case, and this he calls the point in issue, alluding to the profession of his friend Trebatius, which was that of the law. As to the fundamental point, he lays upon that the main stress of the defence, which must vanish, if that is taken away. Now in his oratorial partitions, he opposes the fundamental point to the defence, because it is first laid down by the accuser. In my opinion, therefore, the truest and the shortest method is, to make no difference between the state of a cause, its fundamental, and the point to be adjudged. For were it not for the fundamental point, nothing could exist to be adjudged. This to me appears to comprehend both causes in the case of Orestes; I mean, that of Clytemnestra murdering Agamemnon, as well as that of Orestes killing Clytemnestra.

But all this perhaps too curious dissertation about terms arises only from the fear I am under of appearing

pearing to the public not to have gone deep enough into the principles of this my undertaking. In the plain manner of educating a speaker, there is no necessity of carrying the pupil through all those minute circumstances. Some teachers are even too minute; Hermagoras, particularly, a very refined writer, and inimitable in most respects, but too circumstantial in his rules; yet at the same time even that fault, if it is a fault, has in it a merit.

The method I have here followed is shorter, and therefore plainer; for it neither fatigues the learner by leading him through the winding labyrinths of the art, nor does it fritter away the fabric of a style, by mincing and diverting it into an infinity of useless particulars. The pleader who makes himself master of the point in controversy, of the merits of the question, of the strength of his antagonist's arguments, and of his own, and where the great stress of the cause must lie, is, in fact, master of all I have laid down in this chapter. And indeed every man of common sense, and of the smallest practice in speaking, must know what the fundamental cause is that constitutes a controversy, and what the point is that is to be debated, and to be adjudged. All which particulars come under the same head. For the point of controversy is the question that is tried, and the question that is tried is the matter that is judged. But we rhetoricians do not always fix our eye upon the main point; and allured by the thirst of praise, however acquired, or by the pleasure of speaking, we wander from the main question to every foreign subject that invites us; because, within a subject, the limits are narrow; without it, they are boundless. Here we speak to what we know; there to what we please. We are not, therefore, in a cause, to busy ourselves in hunting after the question, the fundamental, and the judgment, (for all

that is easy), but we are to keep the main point in view; we are to have it in our eye, through all our seeming digressions, lest we heedlessly drop our weapons, while we are gaping for applause.

The school of Theodorus, as I have observed to you before, reduces all those matters to certain heads, which comprehend several particulars. Under the first head comes the main question, and the state of the cause; under the second, the matters relative to the main question; under the third, the proposition, with the proofs to establish it. Upon the whole, however, in every thing that is to be proved, there is a head, though it may be more or less important. And because I have more circumstantially than seems needful, enlarged upon what has been delivered by other writers upon this subject, and have already explained the constituent parts of a pleading, my next book shall proceed to treat of the introduction or preamble.*

* Mr. Rollin, in his edition, has omitted the whole of this chapter, but I durst not venture to follow him. It is plain, that he considers ecclesiastics and preachers chiefly, in the edition he gives of our author; and has in general omitted every thing that is applicable only to other professions, which requires speaking in public. I am far from being insensible that a few passages of the preceding chapter are rather too speculative for practice. But as, upon the whole, it is full of excellent matter for the formation of a public speaker, besides several curious particulars of antiquity, and as I found it impracticable to abridge it, I rather chose to give it entire, than either to mangle or omit it.

QUINCTILIAN'S INSTITUTES

OF

ELOQUENCE.

BOOK IV.

CHAP. I.

THE ADDRESS.

HAVING now, my friend, Marcellus Victor, finished the third book, which contains almost the fourth part of this work, which I have addressed to you, I now find myself engaged, by fresh reasons and nobler motives, to be careful of having it appear to the utmost advantage, and of recommending it to the approbation of the public, by my attention and accuracy. Hitherto, all our literary correspondence has been confined to ourselves, and whatever mean opinion the rest of mankind might have had of my performance, I was contented, if they could serve our family purposes, by forming your son and my own to the study of eloquence.

But when Domitian, our august emperor, committed to me the charge of his nephews, I should pay an unbecoming compliment to the opinion which that divinity has formed of my abilities, did I not hold it to be the standard by which I am to estimate the importance of my undertaking. When a censor

a censor of his consummate sanctity has stamped with his approbation my endeavours to improve the morals of youth, what a boundless field does he open to provoke my future efforts! or what period ought I to put to my studies in order to answer the expectations of the sovereign my patron, who is all accomplished in eloquence, as he is in every noble qualification! We are not surprised at the poets, who, after invoking the favour of the muses in the beginning of their works, when they come to a passage of more than ordinary importance renew their invocations, and, as it were, begin their addresses afresh. In like manner I hope it will be pardonable in me now to perform a duty which I omitted in the commencement of this work, by invoking to my assistance all the gods, especially that deity which is second to none in being propitious to science, and favourable to learning. Let me implore him to inspire me with genius equal to that expectation which his choice has raised of my abilities; let me invoke his assistance and protection in qualifying me suitably to the distinguished honour of his patronage.

This, though it is an all-powerful one, is not the sole motive of my devotion upon this occasion, for I have another, which is, that in the future progress of this my undertaking, I may excel all that I have already executed. I am now to explain the process of judicial causes, which are many and various. I am to plan out the purposes of an introduction, the rules for stating a case, and the efficacy of proofs, whether they are intended to answer propositions, or to remove objections; I am to display the powers of eloquence in winding up a pleading, whether it is intended to serve the purpose of refreshing the memory of the judge by a short recapitulation of arguments

arguments, or, which is a more arduous task, of working upon his passions. Some writers fearing, should they undertake the whole system, they might sink under its weight, have chosen to handle detached members of this art; and upon each particular of it, some have published several volumes. For my part, I have been presumptuous enough to attempt giving a connected view of the whole at once, thereby undertaking a task that is almost endless; nay, I am staggered with the very thoughts of my growing labours; but as I have entered upon them, I will persevere: my spirit shall bear up, though my strength should sink.

CHAP. II.

CONCERNING THE INTRODUCTION, OR EXORDIUM OF A SPEECH: ITS PROPERTIES, MANNER, POWERS, STYLE, EXECUTION, AND CONSEQUENCES.

THE part of an oration, which the Latins call by the name of an introduction or exordium, the Greeks more properly terma προοίμιον, * Procemium, or flourish; for the Latin word signifies no more than a beginning, but the Greek word intimates it to be a part of the subject upon which they are to enter. If we suppose that this procemium was a short flourish performed by musicians before they entered upon the piece of music that was to win the prize, their orators have plainly borrowed that term

* Videlicet, a flourish in music or singing, practised by musicians amongst the antients, before they entered upon the dispute for the prize of singing, or playing.

to

to express the preamble they make use of, before they enter upon the main pleading, in order to win over the affections of their judges. If we suppose the term alludes (as the Greek word may imply) to a preparation for the main progress of a matter, the same propriety will hold; because the procemium is doubtless intended to render the judge propitious before he enters into the merits of a cause. Meanwhile, it is a wrong practice in schools always to begin a speech, as if the judge was already apprized of the merits of the cause. This absurdity proceeds from a kind of skeleton of the subject being exhibited, previous to the declamation. It is true that at the bar, when a cause has more hearings than one, those kind of beginnings may not be improper, but they seldom or never are proper at the first hearing, unless the judge before whom we plead has been already sufficiently informed of the matter.

The whole design of an introduction is, to prepare the hearer, so as that he may the more favourably attend throughout the whole of our pleading. The principal means of effecting this, as appears by many authors, are three; by rendering him kind, attentive, and tractable; qualities that ought to be kept up in him through the whole of the pleading; but are chiefly necessary at its setting out, because they secure our farther progress in the affections of the judge.

With regard to kindness, we either raise it from persons, or it comes to us from the nature of the cause we plead; but we are not, with most authors, to confine the number of persons interested in a cause to three; the prosecutor, the defendant, and the judge.

For even the person of a pleader may furnish out proper matter for an introduction. It is true, he is to speak sparingly and modestly of himself; yet if he

has the character of being a worthy man, the whole of the cause will be greatly influenced by the consideration of his person. For in that case he will be considered rather in the light of a faithful evidence for truth, than of a zealous advocate for a party. His first business, therefore, is to introduce himself as a pleader for his client, upon the footing of duty, relation, or friendship; but above all, let him, if he can, bring in his regard for his country, or some such other important consideration, as his motive for appearing there. If this is proper for an advocate, it is still far more so for a party, in order to give his prosecution the air of patriotism, virtue, or even necessity.

As the authority of the pleader is of very great efficacy, if, in the business he undertakes, he is far removed from all suspicion of covetousness, resentment or ambition; so, our representing ourselves as being mean, and unequal to the abilities of our adversaries, as Messala generally does in his introductions, procures us a secret recommendation. For we naturally are prejudiced in favour of the weak and the oppressed; and a conscientious judge always with the greatest pleasure hears that pleader, who speaks as if his designs were not to warp, but to inform, his judgment. Hence proceeded the antient practice of slyly concealing their powers of speaking, which is so widely different from the swaggering manner of modern pleaders.

We are likewise to shun all appearances of affronting, reproaching, overbearing, or railing at any man, or body of men, especially of such as cannot be attacked without raising to ourselves an enemy in the breast of the judge. As to the judge himself, it would be mere folly, did not the thing sometimes happen, for me to enjoin, that nothing should be thrown out openly, nay, not by the most distant insinuation,

insinuation, that can be wrested so as to give him offence.

Even the person of the advocate for an opposite party may afford matter for an introduction. This may be sometimes practised so as to do him honour, by pretending ourselves afraid of his eloquence and interest, so as to render the judge jealous of him on those accounts. Sometimes, but very seldom, we are to treat our opponent with contempt; thus, Asinius, when he pleaded for the heirs of Urbinia, ranked the person of Labienus, who was the advocate on the other side, as one of the proofs of a bad, indefensible cause. Cornelius Celsus does not admit this way of speaking to be a proœmium or introduction, because it does not relate to the matter in contest; but I am justified by the greatest authorities, in thinking, that whatever relates to the person of an advocate, must relate to the cause in which he is concerned; because it is a natural consequence that a judge will believe, with the greatest readiness, those advocates whom he hears with the greatest willingness.

As to the person of the prosecutor, I can lay down no fixed rule how he is to be treated. His dignity may be acknowledged, but proper mention may be made of his weaknesses. Sometimes there may be occasion to speak of his merits, and upon these another person may enlarge more decently than he can himself. Great regard is likewise paid to sex, to age, and to rank, in the cases of women, old men, and of wards, when they plead for their children, their relations, or their husbands. For compassion is the only motive that can influence an upright judge; but these are matters that ought to be judiciously sprinkled, and not profusely wasted, upon the introduction.

We are to attack the person of our adversary by the very reverse applications. If great and powerful, he is to be rendered obnoxious; if humble and helpless, contemptible; if wicked and guilty, detestable; three qualities that, of all others, operate the most powerfully in alienating the affections of judges. But the plain expression of them is not enough, for that may be performed even by the unlearned. The cause itself will express them, but it is for the orator to exaggerate, or to extenuate, as he sees proper.

We may win over a judge, not so much by that practice which is in common to both parties, that of praising him, and which ought to be done, but with discretion, by connecting his merits with the interest of our cause. We are to recommend the noble to his dignity, the helpless to his protection, the unhappy to his compassion, and the injured to his justice; and so of all other cases.

It is proper, if possible, for the pleader to be acquainted with the manners of a judge, whether they are severe, gentle, agreeable, grave, unrelenting, or easy; that where they suit, he may make advantage of them for his cause, or mollify them when they are repugnant.

It happens sometimes that a judge may be prepossessed against a pleader, and favour his opponent; such dispositions claim the attention of both parties, but perhaps the party whom he favours has the most delicate point to manage. For judges are sometimes so absurd, as, for the sake of avoiding the appearance of injustice, to commit it in reality, by deciding against those they love, in favour of those they hate.

We have known instances of men being judges in their own cause. In the books of observations published

lished by Septimius, I perceive that Cicero * was concerned in such a cause, and I pleaded the cause of Queen Berenice † before herself. The practice upon such occasions is the same I have already laid down. The party who is in disfavour with the judge pretends boldly to rely on the merits of his cause, while his adversary has some reason to be afraid of the judge's delicacy.

If the judge brings along with him to the bench any prepossession with regard to a cause, it is the business of an advocate to combat or confirm it, as it makes for him or against him. Sometimes a pleader has occasion to fortify his judges against all apprehensions of danger; as Cicero, when he pleaded for Milo, exerted himself in persuading his judges, that Pompey's guards were not drawn out to over-awe them. A pleader may sometimes have occasion to suggest the fear of danger, as Cicero did on the trial of Verres. But this must be done with discretion, and in two manners; the one, which is common, with tenderness and concern for the reputation of the judges, lest they should forfeit their credit with their countrymen, or lest the cause should be carried before another tribunal; the other manner, which is seldom practised, must be performed by asperity and resolution, by threatening to prosecute them for corruption in their office. The more numerous the

* Cicero.] The commentators have here observed, that Cæsar was judge in his own cause when Cicero pleaded for Marcellus, Ligarius and Deiotarus; but I am of opinion that some particular case, not come to our hand, is here alluded to, for all those three cases were rather matters of indulgence than right, and Cicero pleaded rather for Cæsar's forgiveness than his justice.

† Berenice.] The Emperor Titus Vespasian was passionately fond of this lady; she was daughter to King Agrippa, who died under Claudius Cæsar, and sister to another Agrippa, who was alive when Titus took Jerusalem. By this passage of our author it would seem as if in his time she had enjoyed the rank of a sovereign princess.

court is this may be done the more safely; because thereby the wicked will be checked and the virtuous will be encouraged; but before a single judge I am against the practice, unless the case be desperate to all other remedies. But in a case of such necessity, an orator's business is at an end, and he is only to appeal to a higher tribunal; and that often is of service: or he may impeach him of partiality before he gives sentence. For with regard to threatenings and accusations, any one, as well as an orator, may carry them into execution.

If the cause itself should furnish us with matter for conciliating the favour of the judge, we ought to select such parts of it for the introduction as are most favourable for that purpose. There is no occasion here to point out those parts, because they are self-evident, and known upon the very face of every cause, and it is impossible, in such a variety of cases, to collect them together. But as it is serviceable in a cause to find out and improve its favourable parts, so it is equally expedient to confute and extenuate whatever can hurt it.

Compassion, likewise, may be excited from misfortunes which we have suffered, or are about to suffer. For I do not agree in opinion with those who hold that the difference between an introduction and a conclusion consists in the latter recapitulating what is past, and the former foretelling what is to come. I think that, in the introduction, we are to touch upon the compassion of the judges with a sparing and a gentle hand; but, in the conclusion, we are to open the very flood-gates of the passions; we are to organize shadowy beings, we are to raise the dead and produce the pledges they have left behind them; things that cannot come properly into an introduction. But all this is designed, not only for moving the passions, but for dissipating the

effects which an opponent's introduction may have raised. At the same time we are to observe the utility of displaying the wretched condition into which the loss of the cause will throw our client, and the haughtiness and presumption of our opponent, should he gain it.

But it is common to introduce pleadings not with matters immediately relating to the cause or the persons, but connected with them. Not only the pledges I have already mentioned are applicable to persons, but relations, friends, nay, sometimes cities and countries, and whatever may be supposed to belong to the person of a client, may be of service to his cause. The times, though not connected with it, may be properly introduced, as we see in Cicero's pleading for Cælius. The place; as in that for Deiotarus: the circumstances of the trial; as in his oration for Milo: common fame; as in his impeachment of Verres. In short, not to enumerate every particular, we may, with propriety, introduce the expectations of the people and the reputation of the courts of justice; all which are matters that are no part of the merits of the cause, and yet they belong to it. Theophrastus mentions an introduction which may be taken from a foregoing pleading; such is that of Demosthenes for Ctesiphon, in which he begs that he may be allowed to answer in the manner he himself shall think most proper, without being bound down to the method prescribed by the accuser. An overbearing air generally disgusts, through the appearance of arrogance. On the contrary, there is a certain easy manner of speaking, which is prepossessing in our favour, and though it is common, yet we are not to neglect it, were it for no other reason than to be before-hand with our adversary in employing it; I mean the practice of pouring out wishes, sending forth deprecations, putting in remonstrances,

monstrances, and carrying through the whole evident marks of pain and anxiety.

When a thing appears unprecedented, important, dreadful, and exemplary, it generally fixes the attention of the judge, especially if the pleader can connect with it his interests, and that of the public; for then his passions are to be touched with every motive of hope, fear, counsel, intreaty, nay, of vanity, if we think that can serve our purpose. In order to awake his attention, it may likewise be proper to persuade him that our pleading shall be very short, and contain in it nothing but what shall be immediately to the purpose.

Even the attention of a judge, doubtless, shews his docility or readiness to be informed; and he will still be more tractable, if we can briefly and perspicuously state the point that is to come under his cognizance; a method which Homer and Virgil made use of in the very outset of their poems. Now, the way to do this is to give it the air, not of a declaration or exposition, but of a proposition; and for the orator to lay down, in general, the main point he is to speak to, without entering upon the particulars that are to prove and enforce it. I think I cannot give a better example to this purpose than the opening of Cicero's pleading for Cluentius. "I have observed, my lords," says he, "that the whole of the prosecutor's pleading is divided into two parts; in the first he hinges, and lays great stress upon the odious determination given by Junius, which has already made so strong an impression upon the public. The other part, which contains the main stress of this cause, he has touched upon with caution and distrust, and merely for form's sake; I mean the matter of the empoisonment." At the same time it must be owned that this manner is more practicable for him who is to answer than for him

him who opens the argument, because the one is to instruct the judge, and the other to inform him.

I am, indeed, told by some great authorities, that, upon certain occasions, it may be absurd to bespeak the attention and the docility of a judge; and I am sensible of the arguments they bring for this opinion: because, say they, where a cause is likely to go against us, it may be improper to explain it. But this circumstance may be owing rather to the judge being misled, than to his want of attention. For we will suppose that our opponent has already finished his pleading, and that he has brought the judge over to his opinion. If that is the case, is it not necessary for us to endeavour to make the judge alter his opinion? And how can we do that without rendering him attentive and ready to be informed of all we have to offer? What is the consequence? Why, we are sometimes to vilify, sometimes to aggravate, nay, sometimes to put on an air of contempt, in order to divert the judge from the sentiments he entertains in favour of our adversary. This was done by Cicero in his pleading for Ligarius. For what purpose does his play of words, and his agreeable raillery, serve in all that pleading, but to make Cæsar believe that the matter was not new in itself, and that it did not so nearly concern him as he might imagine? What does he do in his pleading for Cælius, but shew that the crime he was charged with was not near so important as it was given out to be? but it is evident, that, of all the rules I have here laid down, some are applicable to one sort of causes, and some to another.

Now, the subjects* to which introductions are to be fitted, are divided, by most authors, into five sorts,

* Subjects.] Orig. Genera for Causarum plurimi quinque fecerunt. The reader will perceive that I have purposely explained this

sorts, the noble, the mean, the doubtful, the surprising, and the dark. To these some have thought proper to add the scandalous, while others comprehend it under the mean, and others under the surprising. Now, the property of the surprising is an event that happens contrary to human foresight or opinion. In the doubtful kind, the business of an introduction is to render the judge favourable; in the obscure, docile; and in the mean, attentive. The nature of a noble cause will, of itself, be sufficient to win him over; but those that are surprising or scandalous, must be palliated by art.

For this reason, some divide an introduction into two parts, a beginning, and an insinuation. In the beginning, we make a plain, downright request for the kindness and attention of the judge. But, as this never can succeed when the cause is of a scandalous nature, we are then to insinuate ourselves into their affections; especially if it has an ignoble appearance, either on account of its being dishonest in itself, or because the public is prepossessed against it; or if it is stigmatised even upon

this passage in the translation, because the literal meaning of the words stands in flat contradiction to what our author laid down in the fourth chapter of the last book, where he makes the kinds of causes to be only three. This inconsistency is attempted to be apologized for by by commentators, but, I think, with no great success, because it is too glaring to be defended. Meanwhile, as no writer, upon the whole, ever excelled our author in perspicuity and accuracy, I must attribute the blemishes and inconsistencies of the kind I here take notice of, to the lamentable degeneracy of learning which immediately succeeded his time. His great reputation as a teacher of rhetoric, made the whole herd of the ignorant professors of that art consider him as their master; and it is to their interpolations and alterations, that we are to attribute most of the blemishes we discover in Quinctilian. Add to this, that, even in his own life-time, many inaccurate editions of his works were published without his knowledge or consent, which might, through the ignorance of editors, professors and transcribers, infect the genuine edition, which, I am persuaded, has never yet been recovered.

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its front, either through the opinion which the world has of the opposite party, or through the discredit of pleading against a father, against a helpless old man, against the blind, or against an infant orphan.

Certain professors are very verbose in laying down the several remedies which are applicable upon such occasions. They form supposititious causes, which they manage, and plead to, as if they were real actions. But as those pleadings have their source in an infinity of causes, which can be comprehended only under general precepts, it is impracticable to give any particular detail that can comprehend them all. All, therefore, that a pleader can do, is, by his own good sense, to suit his manner to the several occasions that may occur.

One rule I do recommend, as being universal, which is, that a pleader is to fly from what can hurt, to what can serve his purpose. If he is hurt by his cause, let him call in the party; if by the party, let him dwell upon the cause; and if he finds nothing that renders his cause favourable, he is then to endeavour to wound his opponent in the most sensible part. If possible, let him conciliate kindness; next to that, let him extenuate hatred. Where a point is too stubborn to be denied, let him endeavour to shew, either, that it was not so bad as it was given out; or, that the intention is misconstrued; or, that it is not applicable to the present purpose; or, that repentance may atone for it; or, that it has been sufficiently punished already. An advocate, therefore, in pleading has advantages which his client has not, because, when he praises another, he incurs no imputation of vanity; and even his reproofs, sometimes, may be of service to his cause. For he will sometimes put on a seeming concern. Thus Cicero, in his pleading for Rabirius Posthumus,

mus, in order to win over the attention of the judges, assumes all the air of impartiality, by seeming to put even his client in the wrong, that he may gain the more belief when he comes either to defend or to deny the facts. A main consideration, therefore, with a pleader, is, whether he ought to speak in the character of an advocate, or of a party, when he can assume either with equal propriety. Now, it often happens in schools, but seldom at the bar, that a party can speak with decency in his own cause. But the business of a declaimer is to introduce, in the characters of the parties themselves, those causes that chiefly turn upon the pathetic and moving. Such a pleading cannot be properly intrusted to any other character, because we are always to suppose that the emotions of mind in the party concerned, are stronger than those of any other person who is more indifferent.

The practice of insinuation is likewise proper, when the minds of the judges are prepossessed by the pleading of our antagonist, or if we are to speak when they are quite tired out. In the first case, we succeed by promising to bring our proofs, and to destroy all that has been advanced against us; and in the second, by promising to be very short, and by an application of those rules which I have already laid down for winning the attention of a judge. A well-timed piece of wit gives likewise great relief to the spirits, after a long hearing; and the mind of a judge is refreshed by whatever gives it pleasure. It likewise has no bad effect when we prevent an objection, as Cicero does in his oration, when he says, that "he is sensible some people are surprised that he, who had for so many years, appeared in the defence of many, without attacking one, should now become the impeacher of Verres;" and then he proceeds to shew, that, in prosecuting Verres, he does

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no more than defend the allies of Rome. This method is, by the Greeks, termed προληψις.

But as it is not enough for me to point out the utility of an introduction, or exordium, without instructing the learner in what manner he is best to compose it; I am here to add, that before he begins his pleading, he is duly to consider what he is to say; before whom, and against whom, he is to plead; the time, the place, the circumstances; the prepossessions of the public with respect to his cause; what are the private sentiments of the judge upon the matter, before he begins to plead; and then, what he is to desire, what he is to guard against. As to the manner in which we are to begin, we shall be led to it by the very nature of the cause. Our present practice is, to term the first words we begin with an introduction; and every pretty expression that comes uppermost, serves with us for an exordium. It is, however, certain that great part of the exordium should be brought from what is common to the whole of the cause; and yet nothing makes so good a figure in an exordium, as that which cannot be introduced into any other part of the discourse with equal propriety.

An exordium appears with the greater grace, if the matter of it is suggested by our opponent's pleading.* For then it does not appear to be a set form of words drawn up in our study, but com-

* Opponent's pleading.] I am pleased that I can bring from the pleading of an English lawyer as fine an example of this as perhaps is to be found in all antiquity. It is the introduction of Mr. Wearg's (afterwards Sir Clement Wearg) reply to the defence made by the late Bishop of Rochester and his counsel, and which is as follows; "It must be admitted, that the reverend prelate at the bar has made his defence with the utmost force and beauty of eloquence. Was I capable of answering it in the like manner, which I own I am not, yet I should not think myself at liberty to do it, under the present circumstances. For though it may be excusable

posed upon the spot, and on that very occasion; and thereby the pleader acquires a great character for his ready wit, and a great regard is paid to what he says by his manner of speaking, which appears quite natural, and arising from the preceding pleading. Nay, supposing all the rest of his discourse to be drawn up with care and attention, yet it generally runs on to the hearer, as being pronounced extempore, because he could perceive nothing that was studied in its outset.

It very often happens that the modesty of sentiment, of composition, of voice, and countenance, gives a grace to an introduction; nay, it is wrong in a pleader to discover too much confidence, even when he has undeniably the better of the argument. A judge generally hates a party that throws out defiances; and as he is sensible of his own power, he silently expects that a deference should be paid to his authority.

We are carefully therefore to guard against all suspicion of design in the outset of our pleading, which ought to be void of all manner of ostentation, because a judge considers the arts of speaking, when they are apparent, as so many snares thrown out for his understanding. "The perfection of art therefore is to be artful enough to avoid all appearance of art." But this universal and indeed excellent precept has been altered through the degeneracy of taste in our age, because in certain trials, especially capital ones, and even before the Centumviri,* the judges themselves

excusable for a person upon his defence to make use of that powerful instrument of error and deceit, which always imposes upon the reason, and misguides the judgment in proportion as it affects the passions; yet I cannot think the same methods justifiable in a person employed to carry on the prosecution."

* Centumviri.] This was a court originally instituted for matters of private property and of small consequence; but commentators

themselves expect and require to be treated with starched, formal, finical speeches; and think themselves slighted, if great study, with the utmost care, does not appear in every pleading before them. For they love not only to be informed, but to be tickled. It is hard to prescribe any bounds for this practice, and the best mean, I think, we can observe is, to give our pleading an appearance of accuracy, without design, and of skill, without cunning.

It is an old rule in rhetoric to admit into an introduction no expression "that is uncouth, that is too boldly metaphorical, that is antiquated, or that borders upon poetical licence." For in the introduction we are to consider ourselves as not yet admitted to the freedom of speech, and as being, in a manner, hemmed in by the new-raised expectation of our hearers. But when we have won over their affections, when we have warmed their passions, then may we venture to expatiate; especially when we enter upon those regions of eloquence, those rich, those gay regions, where all is radiance, and where the beams of beauty all around hinder the eye from spying out the licentiousness of expression.*

The introduction of a pleading ought to resemble none either of its argumentative, its sentimental, or its explanatory parts. Meanwhile, it must neither be too finely spun, nor too far fetched; it ought to

tors imagine, from this passage, that in Quinctilian's time they took cognizances of capital causes; but I see no reason for that supposition, if we read the original as I have translated it, according to the best manuscripts, and the opinions of the ablest lawyers. Some, for Centumviros read Triumviros, which, could it be supported, would solve all difficulties, because the Triumviri had a power of judging in capital cases.

* All this is extremely just, and in this passage particularly, Quinctilian has given us an example in the precept, and seems to rival his great master Cicero in the glow of his style. See de Oratore, l. 3. c. 37 & 38.

wear the appearance of elegant simplicity, and untoiling nature, without raising too great expectation by pompous words, and a presumptuous look. A speaker who can affect the want of affectation, so as not to be discovered; whose manner is marked by a certain embarrassment, or by what the Greeks call ἀνεπιτηδευσία, always succeeds best in stealing upon the mind of a hearer. But all this ought to be regulated according to the sentiments with which he wants to inspire his judges

A failure of the memory, or of the readiness of expression, has no where a worse effect than in an introduction to a speech; for a lame introduction to a pleading is like a hatchet-face upon a person, and we are always ready to pronounce him to be the worst of pilots who runs the ship foul of a rock, before she has cleared the harbour.

As to the measure of an introduction, that must be directed by the nature of the cause. Where the cause is simple, it requires but a short introduction; but causes that are complicated, dubious, and discreditable, require longer introductions. But authors are ridiculous in prescribing rules that are to serve for all introductions, by confining them to neither more nor less than four sentiments. At the same time we ought to be equally careful to keep an introduction from running into an immoderate length, for then it will appear like a monster running all into head, and the speaker, while he is preparing the hearer, will tire him out.

Some wholly exclude from the introduction all expressions not immediately addressed to the judge, or what the Greeks call an ἀπροσωπον, and, no doubt, they have some shew of reason to support this opinion; for it must be acknowledged, that it is most natural to direct our address chiefly to those whose good opinion we are courting. Sometimes, however, it

may

may be necessary to throw into the introduction some spirit, which will always have the more strength and the more force, if it is addressed to a third person.* When we can do this properly, by what law, by what scrupulous punctilio, are we with-held from throwing into a speech, by means of this figure, all the spirit, and all the animation we can give it? For the writers upon this art have not put a negative upon it, as being an illicit, but as being a bootless figure. But if it may be practised with advantage, the very reason for forbidding it ought to be a reason for our using it. Does not Demosthenes introduce an oration by addressing himself to Æschines, who was his antagonist? And amongst other occasions, upon which Cicero thought this figure proper, in the beginning of his oration for Ligarius, he addresses himself to Tubero; and indeed had he made use of any other figure, his pleading must have lost great part of its spirit. Any one may be sensible of this, who shall apply to the judge the whole of that animated introduction, you have therefore, Tubero, the greatest advantage that an impeacher can wish for, and so forth. For then the sense will seem to be quite reversed, and the whole spirit of it to evaporate. Tubero, therefore, has the greatest advantage that an impeacher can wish for. For Cicero's manner is urgent and instantaneous, the other is only a cold information. We may observe the same in Demosthenes, by giving it a different turn. How is it with Sallust? Does he not, in setting out, immediately address himself to

* There are great variety of readings in the original of this passage, which seems to have been mistaken by commentators and translators; I have kept by the common reading, which makes Quinctilian's meaning to be, that as he has recommended modesty as a property of an exordium, if a speaker thinks it expedient to depart a little from that character, he can do it with more advantage, by addressing himself to some other person than the judge, whose favour he is bespeaking.

Cicero,

Cicero, against whom he is pleading? Heavily, says he, and with an unquiet mind, would I suffer thy railings, O Marcus Tullius. And Cicero observes the same method in the introduction of his invectives against Catiline. How long, O Catiline, wilt thou abuse our patience?

But to take off all surprize with regard to an apostrophe, Cicero makes use of it in his pleading for Scaurus, who was accused of corruption, by speaking in another character. We have examples of it likewise in his pleading for Rabirius Posthumus, and in that for the same Scaurus, when he was indicted for oppressive practices; and likewise in that division of his oration, which I have already observed, when he defended Cluentius. Yet do I not say that though this figure may be made use of with advantage sometimes, it is always to be employed: no; it must be made use of as discretion shall direct. And in like manner we may avail ourselves of similies, provided they are short; and of metaphors, and other figures of speech, all which are prohibited by those very cautious and scrupulous professors; unless we disapprove of the divine irony that Cicero makes use of in the case of Ligarius, which I mentioned some time ago.

It is with greater justice that the same professors point out real defects in introductions. An introduction that may, with equal propriety, suit a thousand other causes, is called a hackneyed one, and yet though seldom or never well received, such introductions are sometimes attended with some advantages, nay, great orators have been often known not ashamed to use them. When one makes use of an introduction, which may equally serve his antagonist, they term it common. When your adversary may avail himself of your introduction, it is called commutable. When it has no relation to the cause,

cause, detached; when brought from another subject, transplanted; and when an introduction is too long, it is said to be erroneous. These, however, are faults that generally are not confined to the introduction only, but run through the whole of the pleading.

The observations I have now made relate to the introduction as often as it is made use of, which does not always happen. For sometimes it is unnecessary; for instance, when the judge is sufficiently prepared without it, or if the matter is such as to require no preparation. Aristotle is of opinion that the whole business of an introduction is superfluous before a judge of sense and integrity. Meanwhile, I am to observe that circumstances may happen, which may put it out of our power to make use of an introduction, even though we are so inclined; for instance, when the judge is in a hurry of business; when we are pinched for time; or when a higher power obliges us at once to enter upon the merits of the cause.

On the other hand, the business of an exordium may fall into other parts of a pleading than the beginning. For we sometimes bespeak the attention and the favour of the judges, while we are opening the case, and bringing proofs; a practice which Prodicus thought proper for arousing them, when they begin, as it were, to nod over a cause. Cicero falls into this practice; Then, says he, Caius Varenus, the same who was killed by the slaves of Ancharius, give me leave to say, my lords, that what I have to lay before you, claims your utmost attention. In like manner, if a cause is made up of various circumstances, every part of it requires to be prefaced; thus, now my lords, attend to what follows; or thus I now proceed to the next particular. Nay, when we are establishing our proofs, we may fall in with various

rious circumstances, that serve for the same purposes the introduction does. Instances of this may be found in Cicero's pleading for Cluentius against the censors, and in the apology he makes to Servius, in his pleading for Muræna. But this practice is so frequent, that I need bring no examples to confirm it.

But as often as we make use of an exordium, whether we go on to state or to prove our case, the end of our introduction ought always to be such as that it naturally may fall in with what is immediately to follow.

As to the practice of declaimers in schools, it is tasteless and trifling; for when they are to make a transition, they tack the one part to the other, by some notable sentiment, and by this kind of slight of tongue they look for applause. This was Ovid's method in his Metamorphoses, but he was compelled to it by necessity, because the professed design of his work was to join together into one system, and one continued narrative, matters the most opposite that can be conceived to one another. But why is an orator to steal a transition of this kind? Why is he to impose upon a judge, when it is his business to awaken his attention to facts as they lie in their natural order? For the first part of a case must be lost upon a judge, if he does not know that you are stating it. Therefore a pleader's best method is, neither to tumble abruptly into the opening of his case, nor steal into it mysteriously.

If the exposition or opening of the case should chance to be under any disadvantages through its length or perplexity, the judge ought to be apprized beforehand even of that. Nay, this is a frequent practice with Cicero, especially in his pleading for Cluentius, when he says, I must now retrace far back the matter I am to prove, and while I am doing

doing this, my lords, I beg your patience and favourable attention; for when you are thoroughly masters of the beginning of this matter, you will be the more ripe to form a conclusion. And here I close what I had to say upon the subject of an introduction.

CHAP. III.

CONCERNING THE NARRATIVE, OR STATE OF THE CASE.

THE most usual, and indeed the most natural and proper method is, for an orator, after he has prepared the mind of a judge, in the manner I have already laid down, to open and state the case upon which he is to speak. This we call a narrative. Here I shall, on purpose, slightly touch upon the many over-nice distinctions which some make by multiplying narratives into a great many kinds. For, not contented with requiring the state of the subject-matter that is to be tried, they insist upon an exposition of the person; as for instance, supposing one Marcus Acilius to be the person, we must lay him out to be of mean extraction, and a picentine, to be clamorous but not eloquent. They tell us likewise that we are to state the situation of a place; for instance, Lampsacum, my lords, is a town in the Hellespont. And of a season, as in Virgil:

> In early spring, when from the hoary hills
> The melting snows descend in gentle rills.

They require likewise an opening or exposition of causes, which is very frequent with historians, when they are explaining the rise of a war, a sedition, or a pestilence. This is not all, for they make a distinction

tinction between perfect and imperfect cases, matters that are obvious to the meanest capacity. They likewise add, what is very common, a state or exposition of past times, and likewise of the present, as Cicero does in the case of Roscius of Ameriuin, when he make his observations upon the effects which his naming Crysogonus* had upon his friends. We are likewise told of an exposition of future times, which properly belongs to a spirit of prophecy. The painting a thing as if it were immediately transacting before us (called by the Greeks ὑποτύπωσις) is only a manner, but not the substance of a narrative. But I now proceed to what is more material.

Many authors think that a pleading should consist entirely in narrative; but many arguments destroy that opinion. In the first place, some causes are so very short that they rather consist of a single proposition, than require a narrative, or a state of the case. This sometimes happens to be the case on both sides, either when the cause requires no explanation, or when they agree upon the matter of fact, but differ upon the matter of law. This happened in two cases before the centumvirs; in the one the question was, Whether the son or the brother should succeed to the estate of a person who died without a will. The other was, Whether puberty was to be reckoned according to a certain number of years, or a certain habit of body. It may likewise happen, that a cause may properly admit of being stated, yet the judge may be apprized of

* Chrysogonus.] The Orig. Qualis est Ciceronis de discursu omicorum, Chrysogonus postquam est nominatus. Commentators have perplexed this passage, in supposing it to be intended by Quinctilian as a quotation, whereas, in fact, it is only a narrative of an effect. The passage in the original may be seen in p. 45. vol. 3. of my translation of the Orations.

every

every thing beforehand, or it may be fully opened in a former pleading.

A narrative is likewise sometimes omitted by one or other of the parties; but most generally by him who brings the action, either because a simple proposition is sufficient for his purpose, or because such an omission is most advantageous to his cause. For instance, it is sufficient if a party says, I lent my money, and I demand it back according to my agreement with the borrower. Or, I demand what my friend has left me by his last will and testament. In those two cases, the stating the facts belongs to the defendants, that they may shew the plaintiff's claims to be unjust. It may likewise be sufficient, and most expedient, for a prosecutor to open his cause thus; I say that Horatius has killed his own sister. For this single proposition gives the judge a full information of the fact that is alledged, and it is the business of the opposite party to state its rise and progress. On the other hand, an accused party has no occasion to enter upon a narrative when the charge brought against him can neither be denied, nor defended, and when the whole question turns upon a point of law. For instance, a man steals out of a temple a sum of money belonging to a private person, and he is accused of sacrilege. In such a case it would be more decent in the prisoner's advocate to admit than to explain the fact. We do not, says he, deny that the money was carried out of the temple, but the prosecutor alledges that the defendant is liable to the penalties of the law against sacrilege, though the money was a private, and not a sacred deposit. You, my lords, are to judge of this single point, whether he has been guilty of sacrilege.

But though I am of opinion that any state of the case would be improperly introduced into a cause of

of this kind, so I differ from those who think that a narrative never ought to be introduced, when a party has no other defence, than denying the charge brought against him. Cornelius Celsus is of this opinion, who admits no state of the case in most of the defences made against the charges of murder, corruption or oppression; and in no case but where it contains the sum of the charge that is to be tried, *as laid out by the prosecutor*.* Meanwhile, Celsus himself admits that Cicero, in his pleading for Rabirius Posthumus, states the case, though he denies that Rabirius ever received the money for which the impeachment was brought against him, without saying a single word in all his narrative about the charge that was to be tried.

For my part, I have great authorities on my side, for thinking that, in public trials, narratives are of two sorts; one, in which the cause itself is opened; and the other, in which the circumstances relating to it are explained. I am not guilty of the murder, is a defence that requires no narrative. I admit that it does not; but it admits of many, and those sometimes tedious, expositions concerning the proofs of the charge, concerning the former life of the party, concerning the reasons why a capital charge is brought against this innocent person, and concerning other reasons which impeach its probability. For, the prosecutor is not contented with simply saying you have been guilty of murder. No, he opens his proofs, he lays out the arguments that are to fix the charge. Thus, upon the stage, when Teucer impeaches Ulysses of the murder of Ajax, he says that he found him in a solitary place, with his sword bloody, and near the breathless body of his enemy. But Ulysses endeavours to refute this

* I have added the words that are in italics, because I think my author's meaning requires them.

charge,

charge, not only by denying the fact, but by shew ing that he had no enmity with Ajax, and that the dispute between them was merely a point of glory. He next explains the manner of his coming into that solitary place, and how, when he saw the lifeless body lying upon the ground, he drew the weapon out of the wound. From these premises he forms his defence But a defence, even upon the following charge requires a narrative. Says the prosecutor, You was upon the spot where your enemy was found killed. It is not sufficient to deny this fact, in order to disprove it; for you must shew where you was at that time.

Upon the whole, I am of opinion that defences against prosecutions for corruption or oppression admit of more narratives of this kind, nay, of as many as there are crimes charged upon the party; for it is not enough to deny the crimes without attacking, by proofs and arguments, the state of the case, as laid down by the opposite party, sometimes particularly, and sometimes generally. Can it be improper in a person who is accused of corrupt practices, to acquaint the court with the characters and qualities of his ancestors, and with his former manner of life; and then to shew the pretensions, from his own and his family's merits, which induced him to stand for the office? Or, when a man is accused of oppression, will he not find his advantage in giving a detail of his past life, and the causes that exposed him to the resentment of a whole province, of a single accuser, or of a witness? All this is as much a narrative as is that of Cicero in his first pleading for Cluentius, where he never once touches upon the matter of poisoning, but lays out the causes why his mother became his enemy.

Some circumstances may relate to a cause, without being essential to the state of the case upon which

the cause turns. For example, in Cicero's pleading against Verres, he mentions Lucius Domitius, who hanged a shepherd who confessed that he had made use of a hunting-spear* in killing a wild boar, though he made a present of that very boar to Domitius. Or a narrative may be thrown in in order to extenuate some foreign charge, as in Cicero's pleading for Rabirius Posthumus. "For, my lords, when he came to Alexandria, the king's only purpose of trusting him with the money was, that he might take upon him the care of his person and defray the expences of his court." Or a narrative may be introduced for the sake of aggravating matters, as Cicero does when he describes the procession of Verres. It may be as proper, sometimes, to introduce a fictitious narrative, in order to awaken the attention of the judges; as Cicero does in his pleading for Roscius against Chrysogonus, which I have just now taken notice of. It may sometimes be proper to put the bench into good humour by a few strokes of wit, as the same orator does in his pleading for Cluentius against the brothers, the Cepasii. A narrative sometimes, by way of digression, serves to embellish a pleading. Thus Cicero, in one of his orations against Verres, makes mention of Proserpina: in these very places, says he, we are told that the mother searched for her daughter. All the observations I have now made tend to prove, that the party accused, denying the fact, may properly enter upon a narrative, nay, into a narrative of the very fact that he denies.

But the reader is not simply, and without any reserve, to understand the rule I have laid down, that

* This circumstance is mentioned by Cicero in his fifth pleading against Verres. It seems, Domitius hanged the man because, being a slave, it was unlawful for him to make use of any offensive weapon.

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it is needless to state a case when the judge is already master of it. For there I am to be understood, that the judge is not only master of the case, but looks upon it in a light that is favourable for us. For the main purpose of a narrative is not only to inform the judge, but to bring him over to our reasoning. Therefore, though we may not need to inform a judge, but to give him certain impressions, it is necessary that we should lay our case before him, but in a dress suitable to our design. He may have a general knowledge of what is past, but he may require more particular information as to particular facts. Sometimes we may pretend to begin a narrative, on account of some new member taking his place upon the bench: sometimes, that even the by-standers may be fully apprised of the injustice of what our adversaries advance. In all those, and such like cases, we are to avoid tiring out those hearers who are already acquainted with all the particulars we lay down, by diversifying our narrative by a variety of turns and figures of speech. For example: Surely, my lords, you remember. Or, perhaps it may be needless to dwell any longer upon this matter.—But I am explaining a thing which you, my lord, know much better than myself. —But you are no stranger to that affair.

It has often been doubted, whether the narrative ought immediately to succeed the introduction. They who have maintained the affirmative, are not destitute of arguments to support their opinion. For the design of the introduction being to render a judge more favourable, more tractable, and more attentive; and it being absurd to bring any proof of a cause that is not yet understood; the narrative of the case seems naturally to come immediately after the introduction.

And

And yet the circumstances of a cause may create an alteration in this respect; for we cannot suppose that Marcus Tullius had not good reason for postponing his narrative till he had discussed the three questions he had laid down in his beautiful pleading for Milo, as it has come to our hands through his pen.* For would it have availed him to set forth the manner how Clodius way-laid Milo, had it been improper for him first to speak in Milo's defence upon a charge which he confessed, that of killing Clodius;† *to take off the prejudices of the senate against Milo, or the public opinion that Pompey was prepossessed against him, and for certain reasons of state had surrounded the court with armed soldiers?* But I am of opinion that all considerations of the like nature ought to be looked upon as part of the introduction, because they serve to prepare the judges. But Cicero, in his pleading for Varenus,‡ even defers the opening of the case till he has refuted the allegations of his antagonist. This method may be practised to great advantage, when we are not only to repel an accusation, but to transfer it to another, for the defence of the one serves to introduce our charge against the other. Thus we make use of arms, first to defend ourselves, that we may the more effectually attack our enemies.

* The reader who has perused Cicero's Oration for Milo, needs not, perhaps, to be informed that it is not the same he spoke. For it received great improvements from his pen. Quinctilian here seems to distinguish his written from his delivered oration, which was extant in the time of his commentator Asconius.

† Two or three lines here follow in the original, which I am of opinion, with some commentators, are intirely spurious. I have, however, translated them according to the sense they seem to carry, but have put them in italics, because they have been admitted into all the printed editions I have seen.

‡ Varenus.] This pleading is not extant. Some read Muræna, but that oration does not answer the description here given of it.

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It happens pretty often, that it is an easy matter to wipe away the crime that is trying; but it may be aggravated with many flagitious practices, with many heavy charges against the party's former life. All such imputations must first be removed, that the judge may be less prepossessed, and more favourable in hearing the defence of the point that really is to be tried. Thus, when Marcus Cælis is defended by Cicero, the whole of that great orator's pleading turns upon refuting the imputations brought against him for luxury, for riotous living, and every kind of profligacy; all which he does before he proceeds to the main charge, that of poisoning. An orator, having thus cleared his way, will then, by degrees proceed to mention the good qualities of his client, and then open the criminality of the charge against which he is to be defended. But we are misled by the method we learnt at school, where all the defence we make is pinned down to certain set points, which we term themes, and therefore we imagine that the narrative should always immediately succeed the introduction.

From this notion declaimers even take the liberty of putting a narrative into their reply; now the very reverse should be their practice, for in pleading for the accuser, they are to open the case, because they speak first; but in their reply, they are to refute* whatever was advanced by the opposite party. Now, as declamation is intended only to fit a student for the bar, why should it not be made agreeable to the practice there? But being ignorant of that practice, they imagine when they come to the bar, that they are, in no respect, to alter their former manner. But even, in school exercises, it sometimes happens, that a proposition must stand in

* The original here is very incorrect: I have followed the reading that seems best to suit with our author's sense.

place of a narrative. Supposing their theme leads them to impeach a jealous husband for using his wife ill, or a beastly fellow* whom they accuse for immorality before the censors. In such cases, where has the pleader any room for a narrative, when the whole charge may be sufficiently pointed out by a single expression, which may stand in any part of his speech? But of this enough; I now proceed to the method of forming a narrative, or stating a case.

A narrative† is an exposition of a matter, in which is contained either an affirmation or a denial of a fact, in that manner which is most proper to persuade the hearers to agree with the speaker. Or as Apollodorus defines it, it is a speech calculated to make the hearer master of the point in dispute. Most writers, the followers of Isocrates particularly, require a narrative to be concise, perspicuous and probable. I am of the same opinion, though Aristotle differs from Isocrates in one respect, for he ridicules the quality of conciseness, because, he thinks, there is no medium, and that a narrative must of neces-

* Orig. Cynicum] Commentators and translators have suffered this word to pass for cynic, which I think cannot be our author's meaning, according to the idea we have of that term, which in English and French signifies no more than a sour, snarling, morose fellow. I have therefore taken advantage of the literal signification of the word, in order to render it a proper subject of impeachment before the censors.

† A narrative] Orig. Narratio est rei factæ, vel ut factæ: utilis ad persuadendum expositio. Though this is the reading approved of by Rollin, Gedoyn, and the generality of commentators, yet I cannot help agreeing with the margin of the edition printed by Robert Stephens, which instead of ut factæ, reads non factæ. The non probably was thrown out from the supposed absurdity of stating a fact, that was not a fact. But as our author has been at great pains to prove that a narrative may be proper for a party that affirms a fact did not happen, and as this definition is plainly formed from his reasoning on that head, I have given my translation such a turn, as to agree with the reading non factæ.

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sity be either long or short. The followers of Theodorus likewise, leave out conciseness and perspicuity, because they think, that it may not always be for a party's advantage, that his case should be concisely and perspicuously stated. I shall therefore take care to distinguish the different kinds of narratives, and show where each can be most advantageously employed.

Now a narrative must either be wholly in our favour, or wholly in favour of our opponent, or partly both. If it be wholly in our favour, we are then to give it the three qualities, by which the judge may most readily remember, comprehend, and believe it. Let none blame me if I recommend to a pleader, even when the narrative is entirely in his favour, to clothe truth itself with probability. For we are to reflect, it often happens, that cases are true, and yet not credible; when others are false, and yet probable. Therefore we are to be as solicitous in winning the belief of the judge, when we are explaining a truth, as when we want to establish a fiction.

The qualities that I here recommend, ought to prevail through all the other parts of a pleading; for through the whole of it we ought to avoid obscurity, extravagance, and improbability. Meanwhile, I would chiefly recommend it in a narrative, because a judge depends on that for his first information, and if it should happen that he should not remember, or not understand, or not believe what we say, it may be next to impossible to set him right in the subsequent part of the pleading.

Now a narrative cannot fail of being plain and perspicuous, if it sets out with such expressions as are proper and significant, but neither vulgar, finical, nor uncouth. In the next place, it must carefully distinguish facts, persons, times, places, and causes, and

and even the speaker ought to deliver it in the manner that is best suited to make the judge understand him with ease.

This last is a quality which many of our pleaders neglect; for they cannot endure the awful silence of attention, but court the shouts of the mob that is either hired to applaud them, or stands round the tribunal by accident. Such pleaders think they are never eloquent, unless they are shaking the whole court by their mouthings and vociferation. They imagine that to open, and to state a case in language which other people uses, belongs only to the illiterate and the vulgar; and yet it is hard to say, whether, though their will did serve them, their abilities could, in going through this task, cheap as they seem to hold it. For the most experienced in the practice of eloquence, find nothing more difficult than to speak what every one who hears it thinks he himself would say upon the same occasion; because such speeches are considered by the hearers, not as being artful, but true. Now, an orator never speaks so well, as when what he says is believed to be truth. But the present mode is, for an orator, when he prances into the field of narrative, to set up a neighing, to cock his ears, to caper about with all the symptoms of extravagance and wantonness throughout all his facts, expressions, and discourse. The consequence is monstrous; many are pleased with his action, but none understand his meaning. But enough of this, lest I get more ill-will by blaming what is faulty, than approbation by recommending what is beautiful.

A narrative must be concise, if we begin with explaining the very point, which is to come under the cognizance of the judge. In the next place, if we say nothing that is unconnected with the cause; and in the last place, if we retrench all circumstances

that may be retrenched without prejudice either to the information of the judge, or the interest of our client. It often happens that a narrative made up of many quaint particulars, proves tedious upon the whole; for instance, I came into the harbour, I spied a ship, I asked for how much she might be freighted, I agreed to the price, I went aboard, we weighed our anchors, slipped our cables, and went upon our voyage. Each particular here is told as concisely as possible, and yet the speaker needed only to have said, I sailed out of the harbour. In like manner, as often as the event sufficiently points out what has preceded it, all that has gone before will be understood, if we confine ourselves to the event. Supposing a man, for instance, had a mind to inform a judge, that he had a youth for his son; there is no occasion for him to begin with, My lords, being desirous of children, I married a wife, I begot a son, I have given him education, and he is now become a youth.

The Greeks distinguish between a narrative that is short, and one that is curtailed; the one is void of all superfluity, and the other wants somewhat that is necessary. For my part, I take brevity, or conciseness, to consist, not in saying less, but in not saying more, than is needful. As to repetitions, tautologies, and circumlocutions, which are condemned by certain writers upon this art, I take them to be faults that ought to be avoided for other reasons, than that of observing brevity, and therefore I but just mention them here.

We are however with equal care to avoid that obscurity which attends too great a frugality of words; and of the two faults, that of redundancy is preferable to that of deficiency. Our introducing what is superfluous may be tiresome, but our retrenching what is necessary, must be dangerous. For that reason,

son, we ought even to avoid the concise manner of Sallust, though it is looked upon as one of his distinguishing excellencies; nor ought we to start from one subject to another. The reader who has leisure to examine with attention, will perhaps lose nothing by either of these manners, but they may escape a hearer who has no opportunity of hearing them repeated. We are farther to observe, that the man who applies himself to reading, has generally some learning; whereas our commissioners for hearing causes generally come from the country, to the courts of justice, where they are to determine according to the information they are master of. Therefore, perhaps, it may be right for a pleader to confine himself to a just mean; that is, in a narrative to speak as much as is necessary, and as much as is sufficient.

Now I would not have that sufficiency restricted to a bare stating of facts, because there is an elegance which ought to be joined with conciseness, otherwise it will partake of rudeness. For we are allured by what we like, and what gives us pleasure never seems tedious. Thus, when we travel a great way, if the road is pleasing and amusing, it fatigues us less than a hard, rugged road, though of much less extent. Nor shall I ever be such an advocate for conciseness, as to exclude from it any circumstance that can render the narrative more probable. For if it is too plain and curtailed, it does not deserve the name of a narrative so properly as that of a medley.

I am farther to observe, that many narratives run out into considerable lengths through the nature of their subject; and, as I recommended before, the judge must be prepared for attending to them, from the very beginning of the introduction. In such cases, a pleader is to exert his utmost art in making them

them seem as short, or as little tedious, as possible. One mean of making them seem shorter is by deferring your recital all you can, and yet mentioning the particulars which you defer; for instance what reasons he had for the murder; the parties he associated himself with, and the manner, in which he way-laid the deceased, I shall set forth in the proof. Some circumstances likewise that may lie in our way, ought to be set aside. As, when Cicero says, Fulcinius dies. For, my lords, I shall omit many particulars in that matter, because they are foreign to this cause.

A judicious division of a cause likewise abates the tiresomeness of a pleading; I will relate what happened before the commission of the fact; I will relate what happened at the time; and I will relate what followed it. Thus the whole seems to be rather three short narratives, than a single long one. Sometimes it may be proper to throw in a short interlocution; You have heard, my lords, in what manner the thing was done; I am now to inform you of what followed. For a judge's attention is relieved by one part being brought to a period, and he prepares himself as for a fresh beginning.

But if, notwithstanding all the arts that can be practised, the detail should run out into too great a length, we will find it of service, at the latter end of each part, to make a kind of recapitulation. Cicero does this even in the middle of a short narrative. As yet, Caius Cæsar, Quintus Ligarius is entirely blameless; he went from home upon no war, nay not so much as upon the smallest presumption that a war was to happen and so on.

But let us consult our own good-sense in advancing nothing that is repugnant to nature, for that, above all other things, gives to a narrative an air of probability. Let us next premise to facts their causes

causes and motives; I do not mean all the facts we mention, but those in question; and then we are to form the characters of parties agreeably to the facts we endeavour to fix upon them. If we accuse a man of theft we are to represent him rapacious; if of adultery, lustful; if of murder, audacious; and we are to reverse all these characters in those we defend upon the same heads. We are likewise to have a strict regard to the agreement of places, times, and the like circumstances. There is a certain kind of management likewise that gives credibility to a narrative, in the same manner as it does to dramatical compositions; one circumstance so naturally follows and coincides with another, that if you manage the first part of your narrative skilfully, the judge himself before-hand knows what you are to advance next.

A pleader will likewise find his account in sprinkling, as it were, his narrative with a few seeds of proof, but still so as to remember, that he is narrating, and not proving. We may likewise confirm a proposition by an evidence, but let it be short and plain: For instance, when we bring an impeachment for poison; he was in health, my lords, when he drank, he immediately dropt down dead, and his body appeared swelled and discoloured.

The same effect follows, when we prepare the court by representing the party accused as being hardy, armed, designing, a fact he commits against the weak, the defenceless, and the unsuspecting. In short, we are to dress out in our narrative, whatever we are to touch upon in our proof; such as the character of the party, the cause, the place, the time, the instrument, and the occasion.

Sometimes we may be at a loss for those circumstances, and then we are to acknowledge that the thing seems hardly credible, but that still it is true, and

and therefore the party is to be deemed more guilty; that we cannot account for the manner and motives of the action, but that though the matter be amazing, we shall, upon the whole, be able to prove it.

But the appearance of simplicity, of all other manners, has the best effect in disposing the minds of a court in our favour. Thus, when Cicero had premised, to great advantage, every thing that could make it appear that Clodius way-laid Milo, and not Milo, Clodius, the sly insinuation he throws in, with all the appearance of simplicity, has a prodigious effect. Milo, says he, who had been that day in the senate-house, as soon as the senate broke up, came home, shifted his shoes and his cloaths, and, as usual, waited a little, while his wife was getting ready: with what a cool, undesigning air Milo does all this! and that great master of eloquence raised that effect, not only from the circumstances of delay and slowness, which he introduces, but by plain, common expressions, without the least shew of the art he uses: had he spoke them in an animated, glowing manner, he might have roused up the jealousy and the distrust of the judge against his client. Most people will accuse this manner with being cold and lifeless, but the very circumstance of the reader's not attending to the delicacy that is couched here, is a proof how well it is calculated to impose upon a hearer.

I have now discussed the requisites that give credibility to a narrative. As to guarding against contradictions or inconsistencies in a narrative, if a man requires any cautions upon that head, all instruction is lost upon him. And yet some writers upon this art have given rules of that kind, which they have valued as great curiosities, and discoveries of their own sagacity.

To the three properties of a narrative which I have mentioned,

mentioned, some have added sublimity. But most causes cannot admit of this property; for what has sublimity to do with private business, with loans of money, with leases, with bargains, injunctions, and the like matters; and from the example I have given from Cicero's pleading for Milo, it may often be not to the purpose. Besides, we are to remember there are many causes in which we have occasion to admit, to excuse, and to submit what we are offering to the court; and sublimity of expression is utterly inconsistent with such matters. Sublimity of expression is therefore no more a peculiar character of a narrative, than compassion, invective, seriousness, smoothness, or wit are; all of which do extremely well in their proper places, but have no peculiar fixed station in the narrative.

The property likewise which Theodectus assigns, as being peculiar to the narrative, is in common to all its other parts; for he does not only require it to be sublime, but agreeable likewise.

To those properties some add roundness. But I must not here conceal that Cicero has assigned still more properties to a narrative; for besides plainness conciseness, and probability, he requires it to be round, characteristical, and suitable to the occasion. Now the characteristical style implies its being suited as much as possible to the occasion. As to roundness in a narrative, if I understand the term, it is a certain powerful operation of language, which not only speaks the truth, but in some measure paints it to our eyes; it may, however, be ranked under the head of perspicuity; and yet some have thought that it may hurt a cause, because, in cases truth ought sometimes to be disguised. But this is a ridiculous doctrine; because the man who disguises a narrative, does not advance truth, but falsehood;

hood; and, even in that case, he ought to make all he says as plain as possible.

But as we are, by chance, as it were, come to the more difficult kinds of narratives, let us now treat of those in which the matter of fact lies against us; and in such cases some have been of opinion, that the narrative ought entirely to be omitted. Nothing is more easy than that, unless it is for one not to open his mouth at all upon the subject. But if you should have your own reasons for undertaking a cause of this kind, what purpose can it serve to confess by your silence the injustice of your cause? And what absurdity would it be to imagine that a judge will be so stupid as to determine in favour of what he knows very well you have concealed from his knowledge. Meanwhile, I am very sensible, that in a narrative, some matters are to be denied, some ought to be added, others altered, and in like manner some ought to be concealed; but still we are at liberty to conceal only what is proper to be suppressed. But this sometimes is done in order to avoid tediousness; as for example, when we say, He answered what he thought proper.

Let us, therefore, distinguish the kinds of causes; for where the point does not turn upon the matter of fact, but of law, though the matter is against us, we are at liberty to confess it; as for instance, Such a party carried money out of the temple, but it was private property, therefore he is not guilty of sacrilege. Such a man has debauched a virgin, but notwithstanding, it ought not to be in the father's option to put him to death or make him marry her. Such another has committed a violent assault upon a freeman, who afterwards hanged himself, but the offending party ought not for that to be capitally punished, but pay the fine to which the law condemns him. But in confessions of this kind there is still some mollifying

lifying circumstance which may soften the bad impressions which our adversary's speech may have occasioned; nay, our slaves are at liberty to say all they can by way of apology for their offences. Some circumstances too may be mitigated by seeming not to recount them; for instance, The accused party, my lords, did not, as the impeacher alledges, enter into the temple with a premeditated design to rob it, neither did he spend any time in concerting the robbery. No; he was tempted by the opportunity and the absence of the guards, which had too great prevalence over human infirmity. But that is nothing to the purpose; he has been to blame, he has been guilty of theft; I pretend not to defend a crime, of which he is ready to undergo the penalty. Sometimes it may be proper to put ourselves in the wrong. For example: "Shall I say that you was impelled by liquor; that you fell into a mistake; that you was deceived by the darkness of the night? All these circumstances may be true, but still you have violated a freeman; therefore you are to pay the fine which the law imposes."

Sometimes we may fortify our cause by a proposition, and then we may explain it. Every circumstance is against the three sons who conspired against the life of their father. Every one of them drew lots who should murder him by night; accordingly, one by one, they enter his bedchamber, but none of them had the power or resolution to kill him; and, when the father awoke, they confessed their guilt. But if, notwithstanding, the father, instead of disinheriting of them, as the law directs, should divide his estate amongst them, and turn their advocate against the charge of parricide, he will plead in this manner. These young men are accused of having violated the laws of their country, by being guilty of parricide, though their father is yet alive,

alive, and appears in their defence. As to the manner of the fact, there is no occasion to enter upon a detail of that, as it comes not under the description of the law. But, if you require me to confess in what I have been to blame, I own that I have been a severe, close-fisted, father; and have locked up that money, which they can now manage to more advantage than I can. He may then alledge, "That his sons were prompted to the attempt by sons whose fathers were more indulgent; but that the event clearly demonstrates that, in their hearts, they abhor the crime of murdering their father, because they could not put it in execution. As a farther proof than that what occasion was there for binding themselves by oath to do a thing that was voluntary; or why draw lots, but because each wanted to excuse himself from making the attempt?" All these are circumstances that make an impression upon the mind, after it has been mollified by the first proposition.

But when the question is, whether such a thing is fact, or what the nature of the fact is? Supposing that every circumstance turns against us, yet still I cannot see that it is possible for us to avoid a narrative, without doing prejudice to our cause. The impeacher has already laid out a narrative, in which he has not confined himself to bare matters of fact, but he has aggravated them, he has embittered and envenomed them by his expression, he has strengthened all he said by his proofs, he has fired the bench by his peroration, and has left his hearers full of resentment in his favour. The judge, therefore, naturally looks for our manner of stating the case; if we give no state of it, the necessary consequence is, that he believes every thing, and every aggravation that has been offered by our adversary.

But how, it may be said, are we to give a narrative of the same matters that have been laid down before?

before? My answer to that is, That if the case turns upon the quality of the action, which it necessarily does when both parties are agreed upon the fact, we are to recount the same matters, but not in the same manner; for we are to assign them other motives, and account for them differently, and upon very opposite principles. Some things admit of being mollified in the expression. Thus, luxury may be softened into gaiety, avarice into frugality, and heedlessness into simplicity. In short, we are to employ our look, our voice, and even our dress, in order to gain some point, either of advantage or compassion, to our cause; and it has been seen that the very confession of a fact has drawn tears from an audience.

Give me leave now to ask, Whether a pleader can enter upon the defence of a matter which he has not stated? Now, in my opinion, if we neither enter upon a narrative, nor a defence, we betray our cause; but, if we are to enter upon a defence, it certainly is proper to state the matters which we are to prove; consequently, Why are we not to state those matters which we are to contradict? And, in order to do this, it is necessary we should unfold them. Or, where is the difference between a proof and a narrative, unless that the narrative lays down an uninterrupted proposition of what is to be proved, and the proof is a confirmation agreeable to the narrative?

Let us, therefore, now examine, Whether a state of facts, in the case I have mentioned, does not require to be more enlarged and diffused, on account of the preparation and evidences which it is to contain, and by which we expect to carry our point. I mention evidences, in contradistinction to reasonings, which, in the meanwhile, is greatly assisted by a positive manner of speaking. For instance, when

when we affirm that it is impossible to know where the stress of our cause lies, from the first state of facts; when we beg the judges, while they attend, to suspend their opinion, and assure them that we shall make good our point. In short, we are, as often as occasion presents, to give our narrative a turn and complexion, quite different from that of our opponent. In such causes, we may as well dispense with the preamble, the chief purpose of which is to render the judge more favourably disposed to hear our representation of the matter. In the meanwhile, it is certain that this purpose is never so necessary, as when we are to disabuse the judge of the prejudices and prepossessions he entertains against us.

With regard to conjectural causes, where the trial turns upon the dubiety of a fact, the exposition which they require does not so immediately regard the matter in question, as the circumstances by which it is to be evidenced. Now, as we may suppose that the prosecutor puts the worst gloss upon every thing that he advances, the defendant is to take off all the impressions he may have made, and therefore the affair must be represented to the judge in two quite different lights.

But, say some, some evidences have no force, but by their being connected and accumulated; for, when detached and separated, they are slight and unavailing. To that I answer, that the objection can only affect the manner of stating a case, and not the question, whether a case ought to be stated at all. For nothing is to hinder a pleader, when it is proper to connect, and accumulate together, a variety of evidence in his narrative, to promise that he will explain it elsewhere, and in a more proper place; to divide his narrative; to prove every cir-

cumstance as he touches upon it, and so proceed to what follows.

For I do not agree with those who are of opinion that a narrative ought to proceed in the order of facts as they happened; no, I am for observing that order of facts which is most for the interest of our cause; and we have a variety of experience to assist us in that practice. For, when we leave out a matter in the order that it happened, that we may introduce it to more advantage in another place, we may pretend that it had escaped our memory. Sometimes we may tell the court, that we chuse to represent facts in such an order, because it will throw great lights upon the cause; but that we shall soon resume the thread of our facts. Sometimes, after we have explained the matter, we may add the motives that occasioned it; for, in our pleading for a party, we are not to be tied down to any one invariable rule, but we are to consider what is most suitable to the nature and the circumstances, of our cause; and we are to act as surgeons, who either cure a wound immediately, or, if the cure requires time, bind it up.

In the meanwhile, I even think it no improriety to repeat a narrative. Cicero has done this in his pleading for Cluentius; and it is not only allowable, but, in some cases, necessary. For example, in all causes of corruption, and in all complicated cases; for none but a madman will, through any scrupulous attachment to rules, be diverted from the manner which the nature of his cause requires. For this reason the narrative generally goes before the proof of a cause, that the judge may be master of the point that is to be tried. Now, if every circumstance either requires to be proved, or refuted, why should not every circumstance be laid down in the

the narrative? I can say for myself, if my experience and practice can communicate any degree of authority to what I advance, that I used that manner at the bar, as often as I saw it for the interest of my client, and that too with the approbation, not only of the best judges, but of the whole court. Let me not be accused of arrogance, (for if I advance ought but what is truth, many pleaders, my cotemporaries and associates, are yet alive to refute me) if I add, that it generally was allotted to me to establish* the proofs of a cause. Meanwhile, I am far from saying that it is not often proper to follow the order of facts; nay, sometimes, we cannot deviate from it, but with the utmost impropriety. For instance, how can you introduce into a narrative; First, that a woman bore a child, and then

* Orig. Ferè ponendæ à me causæ officium exigebatur.] As the narrative and the proof were connected together, Quinctilian therefore executed both parts. I cannot, however, apprehend, that commentators have perfectly well understood the practice of the Roman courts of justice. They tell us, upon the authority of Asconius, that several advocates were generally concerned in the same cause, and that one was appointed for the introduction, another for the narrative, and so on through every other part of the pleading. But I can see no matter of reason for a supposition of this kind. Such a practice must be both absurd and ridiculous, and we find no instance of it in Cicero, though commentators observe that Asconius mentions him, as being generally employed in the epilogue, or the winding up. I must therefore be of opinion, that every orator went through all the parts of the cause that were necessary to be spoken to, but that such and such parts were more and peculiarly laboured by such and such speakers. In the case of Milo, for instance, Asconius, in his excellent and instructive argument prefixed to Cicero's pleading, informs us of a vast number of material facts, which Cicero takes no manner of notice of, but were very possibly spoke to by other pleaders, and at different times, while that cause was depending. Cicero, however, has very industriously laboured the question upon the quality of the crime, and has exerted himself with inimitable talents in the winding up, but at the same time his pleading has all the constituent parts of an oration.

conceived it? Or, that a testament was opened, and then sealed? In such cases, if you make mention of a latter circumstance, you are to omit what preceded it.

Sometimes falsities are advanced in a narrative, of which two kinds are in practice at the bar. One depends upon evidence: for instance, Publius Clodius, from the confidence he reposed in his witnesses, affirmed, that he was at Interamna the night he committed incest at Rome. The other kind is supported by the wit and abilities of the pleader, and sometimes consists entirely in giving the complexion, or varnish, of truth to certain circumstances; and sometimes in misrepresenting the matter in question. But in both cases we are to take particular care to advance nothing that is impossible. In the next place, let all our allegations agree with characters, places, and times; let them be probable, with regard to their motives and order, and, if it comes in our way, let us connect them with some real truth, or confirm them with some evidence that has relation to the cause. For by indulging ourselves in bringing evidences quite foreign to the question, we betray our cause, because it is then supposed we are speaking just as we please.

Above all things we are to take care never to advance inconsistencies; a practice into which a speaker is very apt to fall, when he launches out into fiction. Some circumstances may agree perfectly well with others, but be inconsistent upon the whole. We are likewise to take care never to advance any thing that contradicts any fact that has been established as proved. Now a speaker ought always to remember the fictitious part of his pleading, because fiction is very apt to escape the memory, and no saying is more true than that, Liars ought to have good memories. We are likewise to remember,

remember, (if we are pleading our own cause) that we are to lay down one fact, to which we are invariably to adhere; but if we plead that of another, we are at liberty to throw out a thousand questionable circumstances.

In certain declamations, however, the speaker has a liberty of enumerating all the circumstances that can be advanced by way of reply, when we suppose a party not to reply to the questions that are asked him. But we must take care that our fictions are not of that sort, as to admit of being disproved by evidence. Some arise entirely from our own suggestions, and are confined within our own breasts. Some we may rest upon the authority of the dead, and therefore they do not admit of being disproved. Some may be for the interest of the party, who can, but will not, disprove them. We may even palm some upon our opponent, because his averment to the contrary will go for nothing. As to dreams and superstitions, they are now become so stale, that they have lost all manner of effect.

But in narratives no varnish ought to be made use of, unless it is of the same complexion with the rest of the pleading, especially as some facts admit of no other proof of bold averments and perseverance. For instance, The parasite, who claimed a young man who had been thrice disinherited by a rich one, and discharged of allegiance to him, as his own son. That parasite, I say, had a colourable pretence for his claim, by alledging that his poverty was the cause of his exposing his own infant, that he assumed the character of a parasite, or hanger on, to the rich man, merely because the young man, his son, lived in his house, and that it appeared he was not the son of the rich man, because he was thrice disinherited, though nothing came out against him. But unless this parasite has the skill, through

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the whole of his pleading, to express a paternal love even in the warmest manner, and his fears for the young man, who is living in a house where he is mortally hated, he must be suspected to be no better than an occasional claimant.

I do not know whether it is possible for a circumstance to happen in real life, that often happens in school declamations, that each party makes use of the same allegations, and turns the same weapons against the other. For instance, a wife informs her husband that his son had attempted to debauch her, and that he had appointed a time and place for that purpose. The son on the other hand makes an information against his stepmother upon the very same fact, but naming a different time and place. The father finds his son in the very place mentioned by the wife, and the wife in the place mentioned by the son. Upon this he turns away his wife, who makes no defence, and he disinherits his son. In this case the same allegations that serve for the son, serve for the stepmother. They are, however, to be set against one another, and the judgment we form must result from a comparison of persons, from the circumstances of the information, and from the silence of the woman, when she is divorced. We ought likewise to remember, that some facts are of such a nature as to admit of no varnishing, and yet they must be defended: as for instance, the rich man who was prosecuted for damages for cudgelling the statue of one poorer than himself, whom he hated. Now nobody can say that this was the action of a man in his senses, and that an action may not be brought (whether it is brought or not) against the rich man.

We are now to enquire whether a narrative is to be blended or distinguished, when part of it is in our favour, and part of it makes against us; and this we

we can only do by the circumstances of the cause. For if the unfavourable parts of it are most numerous, they must prevail over the favourable. For that reason, the best method in such a case is to distinguish them, by explaining and proving every circumstance that is in our favour, and by employing the methods I have already recommended against whatever offers to our prejudice. If the favourable circumstances preponderate, we may connect them with the unfavourable ones, that we may use the latter by way of auxiliaries, which we may dispose of at our pleasure, but so as may best serve our own purposes. Yet we are not to expose them quite naked, for we are to find out some reasons to make the court believe they are employed for our service, by connecting them with circumstances that divest them of all credibility. Now, unless we make this distinction, the favourable circumstances may be affected by the complexion of the unfavourable ones.

In narratives it usually is a rule to make no digression; to say nothing but what is addressed immediately to the judge; to speak in no character but one; and never to pretend to reason upon the facts we lay down; and some have recommended our not touching upon the passions. All those rules are generally to be observed, nay, we are never to depart from them, but upon very cogent occasions, in order to render our narrative more conspicuous and concise.

And indeed, in pleadings, it is very seldom proper to launch into digressions; in them we ought always to observe conciseness, and never to digress; but when the impetuosity of the passion we are supposed to be affected with seems to carry us beyond the usual method. Thus, Cicero, when he is stating the circumstances of Sassia's marriage, Incredible wickedness, says he, of a woman! Wickedness that in this life

life has no parallel! What unbridled, ungovernable lust! What matchless presumption! If she apprehended nothing from the vengeance of the gods, or the detestation of men, ought she not to have been struck with the awfulness of that night; with those nuptial ceremonies, with the sight of the marriage bed, with the bed-chamber of her daughter, and even with the very walls, the silent witnesses of her former marriage.

Sometimes a speech not immediately addressed to the judge, conveys an information with more conciseness, and more force. Upon this head I recommend the same rules I did when I treated of the introduction and of the prosopopœiæ. This manner has been practised not only by Servius Sulpitius, in his pleading for Aufidia, when he says, Can I suppose that you was overpowered by drowsiness? or that you laboured under a lethargy? but also by Cicero; for when he mentions the ship-masters in his pleading against Verres, he makes use of the same manner; You shall pay so much for liberty to see your imprisoned children, and so forth. Nay, in his pleading for Cluentius, does not the conference between Stalenus and Bulbus contribute greatly both to abridge the narrative, and give it credibility? It is very improbable that he fell into this manner at random, because in his oratorial partitions he lays it down as a rule, That a narrative ought to be smooth and surprising, that it ought to keep us in suspense, to contain amazing events, and to admit of personal conferences; all which manners are calculated to touch the passions.

I have already observed that a narrative never admits of arguing, though it may sometimes have argument; as when Cicero, in his pleading for Ligarius, says, that his behaviour in the government was such as rendered the preservation of the peace the great

great object of his concern. When our subject requires it, we are to insert in a narrative, but briefly, both a defence, and the motives of what was done; for our narrative ought not to be that of a witness, but of an advocate. A naked fact may lie as follows: Quintus Ligarius went into Africa as lieutenant-general under Caius Considius. But how does Cicero clothe this fact? Quintus Ligarius, says he, before there was any appearance of a war, went as lieutenant-general under Caius Considius, into Africa. When he mentions the same thing in another place, he says, that he went from home upon no expectation of war, nay, not so much as upon the smallest presumption that a war was to happen. And when it was sufficient, for the sake of information, to say, that Quintus Ligarius suffered himself to be incumbered with no business, he says, that he longed to be with his family, and that he passionately wished again to enjoy his friends; by such means Cicero rendered his narrative both probable and pathetic.

I am therefore astonished that writers should debar a pleader from using in a narrative any means to touch the passions. If they only think that they ought not to dwell so long upon the pathetic part as they do in the winding-up or epilogue, I agree with them. For we ought by no means to be tedious. But why am I not to inform a judge in such a manner as to touch his passions? If I can, at the very entrance upon my speech, accomplish the very end which I propose to effect at its conclusion, why am I not to do it? Especially as in the probatory parts I can more easily make an impression upon his mind, when it is possessed either by resentment or compassion.

Does not Cicero, when he has occasion to mention a Roman citizen being whipped, in a very few words touch

touch every spring of passion in the soul? by not only mentioning the quality of the sufferer, the place where he suffered, and the manner of his suffering, but the magnanimity of the person himself; which was proved, by no groans, no supplications escaping from him while he was lashed by the lictor. For all he did was to call out aloud, that he was a Roman citizen, which exasperated his tyrant, and more loudly proclaimed the injustice done him. How was it in the case of Philodamus under the cruelty of Verres? Does not the narrative there work us into a blaze of hatred? Does not the punishment fill our eyes with tears? When the orator rather paints than recites the mournful condition of the father and the son, each bewailing the calamitous death of the other. Can any thing more affecting enter into the winding-up of a speech? Now we are to reflect how tedious it is to wait till the winding-up, if we can affect the passions, without any manner of risque, in the narrative. The facts are familiar to the judge: he hears without any emotion of mind, a repetition of the things that did not affect him when he heard them at first. And it is no easy matter to alter a settled habit. For my own part, though what I have now to say rests rather upon experience than precepts, I am of opinion that the narrative ought to be embellished with as much elegance, and with as many beauties, as any other part of the pleading. But that in a great measure depends upon the complexion of a cause.

For in matters of small moment, such as cases of private property generally are, the dress of the narrative ought to be modest, and suited to the subject. We are there to be delicate in the choice of our expressions, which in the persuasive parts of the pleading have a glow, are rapid, and disguised amidst an

an universal copiousness of language. In the narrative every word ought to be significant, and, as Zeno says, sentimental. No art ought to appear in the composition, but it ought to be extremely elegant, and to admit of no poetical figures, or any manner of speaking that is not adopted by the authority of the antients. The diction should be as pure as possible; it ought to relieve the mind by its variety, and enliven it by its transitions; and to avoid a similarity of cadence or of periods, and a sameness of expression. For a narrative in a matter of small consequence is deprived of the little arts that deck out the other parts of a pleading, and if destitute of elegance, it must make a poor appearance indeed. Add to this, that no part of the pleading requires more attention from the judge, and, for that reason, it must go for nothing, if it is amiss. Besides, there is a certain unaccountable principle in mankind, which induces them to believe with the greatest readiness the things that are told with the greatest beauty, and even the pleasure they feel wins the assent of their understanding.

But, in matters of great concern we are at liberty to employ invectives against what is criminal, and to call for compassion for what is piteous; and this not with a design of finishing the movements of the passions, but of marking out their operations, so as that the outlines may give us an idea of the full representation of the figure. I am not even against spiriting up the judge by some lively sally of wit, when he is fatigued with long attending a cause, especially if it can be done by throwing in something that is very concise; as when Cicero says, the slaves of Milo then acted as every man would wish his own servants should act, were he in the like circumstances. Sometimes a pleader may talk a little more freely, as the same orator does in his pleading for Cluentius; the

the stepdame, says he, weds her son-in-law; no religious rites observed, no lawful authority consulted, and every omen denouncing vengeance against the match. If such language was made use of at the bar, in an age when pleadings were calculated not for ostentation but utility, and when the courts of justice were strict and severe, what liberties may we not indulge at this time, when pleasure breaks in upon trials even for life and fortune. I shall in another place point out how far we are to take advantage of this fashionable failing. Meanwhile, I own that I think some advantage ought to be made of it.

A representation of circumstances, which, as it were, paints a transaction to the eyes of the hearers, is of vast service in a pleading. Such is the description which Marcus Cælius gives of Antony, in the following passage.

His domestics, says he, found him overpowered with inebriated sleep, snoring out his very lungs, and belching as he snored. Some ladies of his pleasure lay promiscuously upon beds, others around him on the floor, as chance or drunkenness directed, intermingled with the relicts* of their debauch. The ladies, however, alarmed at the enemies approach, awakened in dreadful consternation, and endeavoured to rouse their hero, but all in vain; one bawled out his name, another clung about his neck, a third whimpered in his ears, while a fourth was boxing them; but all

* Relicts.] There is a double reading here in the original, some copies reading reliquas, and some reliquias; I have admitted both into the translation. Mr. Rollin has not admitted this passage into his edition, for no other reason that I can think of but over delicacy; for the description it contains is worked up with prodigous wit and humour, and answers extremely well to the manner which Quinctilian is recommending. As to the historical fact, I do not recollect upon what occasion it happened, but it seems to allude to Marc Antony being surprized by an enemy, either in a town or a camp, after a debauch.

was

was to no purpose. The most they could do was to bring him to a drowsy discernment of their several touches and voices, to which he had been so long familiar, and he groped about to embrace the mistress that lay next him; for though drowsiness kept him from awaking, and drunkenness from acting, yet he could not be said to be either asleep or awake; and in this condition he was tumbled and tossed about in the arms of his pimps* and whores. Surely no drawing was ever more like, no reproaches were ever more stinging, no colouring was ever more natural, than what we find in this description.

I must not here omit observing, that the authority of the speaker gives great weight to his narrative. This authority is owing chiefly, though not entirely, to personal virtue, which every man ought to aspire after; but a great deal lies in the manner of speaking. For the more weighty and serious the style of a pleader is, the more effectual it will be in enforcing whatever he lays down as a fact. This part of pleading, therefore, above all others, ought to be void of every appearance of deceit, for here the judge is particularly upon his guard; it must contain nothing that smells of fiction or design, and every expression must be furnished by the cause to the pleader, so that the cause, and not he, may seem to speak. But this manner is intolerable to modern pleaders. For what (say they) is the use of art, unless it is discoverable? But let me tell them, that art, if discoverable, ceases to be art. All their aim, all their purpose, is to gain applause; and while they are courting the audience, they disgust the judge.

There is a certain repetition of narrative, which is more practised in declamations than at the bar.

† Pimps.] In the original here, some read Centuriorum, but I prefer the reading of Cænaturiorum, the signification of which comes pretty near to the sense in which I have translated it.

Its

Its purpose is to give more variety and embellishment to facts, than could be introduced into the first narrative, which requires to be concise; and it is a practice calculated to raise either hatred or compassion. In my opinion, we ought seldom to use it, and never to repeat the whole state of an affair, for we may answer the same purpose, by handling all the particular parts separately. Besides, when a pleader has a mind to use this kind of repetition, he ought but very slightly to touch upon the facts he is to repeat, and to content himself with saying, that he will, in a proper place of his pleading, more fully state the fact and all its circumstances.

Some writers think that a narrative ought to begin with somewhat relative to the party, whom we are to praise if he is our friend, and blacken if he is our antagonist. This, to be sure, is a frequent practice, because all litigations lie between two parties. But we may sometimes introduce the party with the circumstances attending his person, when it can be serviceable to our cause. For example, Aulus Cluentius, my lords, was the father of my client, by far the most leading man in virtue, reputation, and rank, not only of the corporation of Larinum, where he lived, but of all the neighbouring country. Sometimes, as in the pleading for Ligarius, it is sufficient barely to name the party. Very often we begin with the business, as Cicero, in his pleading for Tullius; the paternal estate, says he, of Marcus Tullius, lies in the division of Thurenum. Demosthenes, in his pleading for Ctisiphon, when the Phocensian war broke out, says he, before I entered upon public business. Some strenuously insist that a narrative ought to be carried down, and to end where the very point in question begins; for example, matters being thus circumstanced, my lords, the prætor, Publius Dolabella, as is usual, published a prohibition

tion against all violent intrusion, and that without exception of persons; for the prohibition ordered the party ejected to be reinstated. Our opponent says, that he has reinstated my client, and that is the point now to be tried. This method is always open to the plaintiff, but not always to the defendant.

CHAP. IV.

CONCERNING DIGRESSIONS.

THE confirmation or proof naturally follows the narrative; for the contents of it require to be proved. But before I enter upon a discussion of this part, it is necessary that I take notice of certain opinions that prevail.

It is a general practice, at present, with pleaders, after having finished their narrative, instantly to launch out into all the luxuriancy of style, and take pleasure, as it were, to wanton in the agreeable and flowery fields that their subject affords. This practice has crept from the schools into courts of justice, from declamations into pleadings, after our advocates thought proper to sacrifice the interests of their clients to their own ostentation; imagining, I suppose, that if knotty, stubborn proofs are immediately to succeed the sapless narrative, their pleading must be benumbed and bare, through such a delay of introducing the fire and flowers of speech.

Now I blame this practice, because pleaders always observe it without regard to the nature of the cause, or the interest of the client, as if it was always expedient, nay necessary. They go so far as to croud this part of their pleading with sentiments stript from those parts where they naturally ought to stand;

stand; so that they are forced either to make use of repetitions, or to leave some parts of their pleading quite bare, because they have been squandered upon an improper division.

For my own part, I am free enough to own, that where the nature of a cause requires, or indeed will suffer it, this method of digression may be employed with great advantage, not only after a narrative is closed, but upon general and particular points; and that it throws gracefulness and beauty upon the pleading, provided it is coherent and consequential with the subject, but not if it is rammed and wedged into it, so as to confound and break the natural order of facts and reasonings. Now nothing can be more naturally consequential than the proof is to the state of the facts, unless a digression interposes, either as the end of the narrative, or the beginning of the proof. Therefore, sometimes it may be proper to introduce it there; for example, when a narrative, towards its close, contains somewhat that is very shocking, we are then to launch out against it, with an indignation, which, as it were, gets the better of our judgment, and seems to burst into our purpose. But this is only to be attempted in cases where the fact is beyond all doubt, for you must take care to establish the truth of a fact, before you establish its atrocity, because the presumption of the hearers is against a heavy allegation, if not supported; for it is with great difficulty we can be brought to believe any shocking crime, before it is proved.

This method of digression may be practised to advantage, by inveighing against ingratitude, when you are stating the obligations which your opponent is under to you, or your party; or by exposing the dangerous consequences of the various crimes which you have pointed out in your narrative. But all this ought

ought to be done very concisely; because the judge, being once master of the facts, is impatient till he knows how they are supported, and he wants, as soon as possible, to settle within his own breast the sentence he is to pronounce. Besides, great care ought to be taken lest the matter of the narrative should slip out of the memory of the court, by its attention being diverted to another object, or fatigued by an unavailing delay.

But as a digression is not always necessary upon the close of a narrative, so it often happens that a kind of preparation is extremely expedient before we enter upon the merits of the main question, particularly supposing that the cause we plead for has at first sight but an indifferent aspect, or if we plead in favour of a severe law, or prosecute upon a penal act. This preparation is, as it were, supplemental to the introduction, in order to render the judge favourable to the proofs that we are to offer, and the language we here use admits of more freedom and strength, because the judge is already informed of the cause. Such are the means which we are to use, as it were, for fomentations, in softening whatever we offer that is harsh and severe, and in disposing the mind of the judges in favour of our pleading, and in reconciling them to the rigour of the law we are enforcing. For it is not easy to persuade a man against his inclination, but in doing this it is proper we should be acquainted with the nature of the judge, and whether he is most disposed in favour of the letter, or the spirit of the law; and then we can take our measures accordingly. The same thing likewise will serve when we come to the peroration, or winding up.

This part of a pleading is, by the Greeks, termed ἐκφορὰ, and by the Latins, a digression or launching out. But, as I have already observed, almost every

part of a cause admits of a different digression. For instance, the commendation of men, or of places, the description of countries, the narrative of matters, either actual or fictitious. The praise of Sicily, and the rape of Proserpine, in the pleadings of Cicero against Verres, are of this kind; as is that glorious panegyric upon Pompey, in his defence of Lucius Cornelius; where that divine orator, as if arrested in the career of his pleading by the very name of that great general, breaks off the thread of his discourse, and, as it were, wantons in his praise.

A digression, in my opinion, is a discourse, deviating from the point in question, but relative to the merits of the cause. I, therefore, see no more reason for fixing its station immediately after the narrative, than for determining its object, as the occasions of it are so many and various. I have already established the five parts of a pleading, and whatever does not come under them is a digression, such as, indignation, compassion, hatred, reproach, apologizing, and recrimination. In like manner, every thing besides the point in question, all that aggravates, all that extenuates, and all that moves the passions, and above all, every manner that serves to render a pleading more agreeable and ornamented, as when we touch upon luxury, avarice, the worship of the gods, or the duties of mankind; all these, I say, are digressions, though they scarcely seem to be such, on account of their relation and coherence with the establishment of our proofs.

But very often when we want to refresh, to instruct, to amuse, to petition, or to praise a judge, we launch out into matters that are quite incoherent with our subject. Numberless are the instances of this kind. Sometimes we study them beforehand; sometimes they rise from accident or necessity, as when

when any thing extraordinary happens, when we chance to be interrupted, when a new member comes into the court, and sometimes in case of a riot. Thus, Cicero, in his pleading for Milo, was obliged, in his introduction, to digress, as is plain from the short speech he made upon that occasion. But we may use greater freedoms in digressions that serve to introduce the main question, or to recommend the proof that has been established. But all digressions from the middle either of a narrative or a proof had need to be very short.

CHAP. V.

CONCERNING THE PROPOSITION.

I HAVE already given an answer to those who make the proposition follow the narrative, as part of the matter that is to be adjudged. In my opinion, the proposition is the beginning of each proof, and takes place not only when we are establishing the principal point in question, but when we are bringing particular proofs, especially those of the syllogistical kind. But I now proceed to the former, which I do not think is always necessary. For sometimes, without laying down any proposition, the hearer easily perceives the point in question, especially when the narrative ends where the discussion of the main question begins. Sometimes a recapitulation of the whole follows the narrative, in the same manner as it does when we have established our proofs. An example of this occurs in Cicero's pleading for Milo; This, says he, my lords, is the naked fact; the traitor was conquered, and force repelled by force, or rather audaciousness was overpowered by courage.

But a proposition is sometimes very much to the purpose, especially in those cases where we admit the matter of fact, but hinge upon the point of law. Thus in the case of the man who had stolen from the temple some money that was private property, a pleader may say, My client is arraigned for sacrilege, and upon that crime, my lords, ye are to judge. Thereby the judge is given to understand that the charge of sacrilege is the only point that comes under his cognizance. We may likewise use the same method in causes that are dark or intricate, and it has the effect of not only rendering a case more perspicuous, but likewise more convincing. And in order to convince the judge, we ought to throw in something that is decisive. For instance, The law is very express, that a stranger who mounts the fortification is to suffer death: that you are a stranger is unquestionable, that you have mounted the fortification is past dispute; then what remains but for you to suffer the award of the law? This kind of proposition enforces the confession of the accused party, and in some measure cuts off all delay of judgment, for, while it proposes, it decides the question.

Propositions are either single or complicated; and those are of several kinds. Thus, Socrates was accused of debauching the Athenian youth, and of introducing strange superstitions. Sometimes a great many propositions enter into one charge. Thus, when Demosthenes prosecuted Æschines for misbehaving in his embassy, he charged him "with prevarication, with having observed none of his instructions, with having exceeded the time prescribed him, and with having received presents." The defendant on his side is at liberty to multiply his propositions or allegations. For instance, in an action for debt, he may alledge, Your process is ill-founded;

founded; you cannot act as an attorney; your client is not in a capacity to employ an attorney; you are not the executor of the person who is said to have lent me the money; I was not in his debt. Such allegations may be multiplied at pleasure, but it is sufficient if the matter in question is explained. If those allegations are laid down one by one, and the proof of each tacked to it, they become so many propositions, but if they are accumulated, they admit of a partition.

Some propositions are, what we may call, quite bare, and such generally happen in conjectural causes; I accuse such a man for murder, I prosecute another for theft. Other propositions are supported with a reason; Caius Cornelius has been guilty of a misdemeanor in his office; for, when he was tribune, he himself read* to an assembly of the people the bill he had proposed. Sometimes we lay the proposition down in the first person; as, I accuse such a man of adultery. Sometimes in that of our adversary; he defends himself against my charge of adultery. Sometimes both persons are comprehended; the question between me and my adversary is, which of us is nearest of kin to a person who died intestate? Sometimes we couple two propositions together; my allegation is so and so, that of my antagonist is so and so.

There is a way of speaking, which, though it is not a proposition in form, has all the effect of one. For example, when we close our narrative with this expression, this, my lords, is the matter upon which you are now to give judgment. This awakens the judge to attend more closely to the examination of the main question, and is a kind of warning-piece which gives him to understand that the narrative

* Read.] The clerk of the assembly ought to have dictated the bill to the public cryer, who repeated it aloud to the people.

part

part is closed, and the probatory beginning; and as we are preparing to enter upon the establishment of our proof, he, as it were, resumes his attention anew.

CHAP. VI.

CONCERNING THE PARTITION OR DIVISION OF A PLEADING.

THE division of a pleading is the collecting and arranging, into their proper order, the allegations made use of by ourselves, or our adversary, or by both.

This is thought, by some, to be in all cases indispensable, both because it renders the case more perspicuous, and because the judge becomes more attentive and inclinable to hear us, if he understands not only what we are speaking to, but what we are to speak to next. On the other hand, some think that this practice is dangerous in a pleading, for two reasons; first, because we are apt to forget the order we have laid down; and secondly, some head may suggest itself to the judge, or hearer, which we may have omitted in our division. For my own part, I think this cannot happen to any but a mere dunce, or to one who pretends to plead off-hand, without premeditation or digestion of his matter. In all other respects, what method is so natural and so clear as the proper division of a speech? It is no other than following nature herself, nay, our keeping to the order we propose is a main assistant to the memory.

I therefore cannot approve of those who are against admitting, under one division, more than three propositions: it is true, that if propositions are too much multiplied under a division, they must escape the memory

memory of a judge, and confound his attention. But still they are not invariably to be tied down to that number, because it is possible the nature of a cause may require more.

There are, however, other reasons that may render the division of a discourse improper. In the first place, things that are said off-hand, and seem to be without premeditation, and to arise as it were from the present occasion, are generally best received. Hence it is we make use of the expressions, I had almost forgot; it had escaped my memory; I thank you for putting me in mind. Now, if beforehand you arrange your proofs, you forestall all the pleasure of novelty. Sometimes it may likewise be proper to impose upon the judge, and to employ art in hoodwinking him, to prevent his perceiving our real meaning. For a proposition may be such as may shock a judge in the same manner as a patient is shocked at the sight of the surgeon's instruments before the operation is performed. But if the pleader proceeds without laying down any proposition before hand, the judge then suspects nothing, and does not fall to examine the matter within his own breast, and thus he may assent to what he would have disallowed, had he been put upon his guard.

Sometimes it may be proper to avoid, not only the distinction, but the mention of questions, to confound the passions, and divert the attention of the hearer. For information is not the only business of an orator: No; the utmost effort of his eloquence is to touch the passions. And nothing is a greater enemy to that than a minute, exact, scrupulous division of our discourse, at a time when we ought to be working upon the passions of a judge, so as to take from him the power of decreeing against us.

Nay,

Nay, does it not sometimes happen that circumstances, when distinguished from one another, are slight and inconsiderable, but when accumulated, are strong and prevalent? We ought sometimes to collect them together, that they may burst out all at once. And yet we should be sparing of this practice; we should be forced to it by nothing but necessity, which gives expediency to the most inexpedient methods.

Let me add, that, in all divisions of a discourse, there is some leading point, and when a judge is master of it, he is disgusted with all the rest, as being unnecessary.

Upon the whole, if you are either to urge or to refute a complication of charges, a partition is both expedient and agreeable, because thereby the facts we are to speak to, appear in their proper order. But I think it useless, when we are defending a party upon one charge only. For instance, were we to run into the following division. I affirm that my client is not of such a character, as to make it credible that he could be guilty of murder; I affirm that he could have no motive for murdering the deceased; and I affirm that he was beyond seas at the time the murder was committed. Now in this division, the two first averments are absolutely useless. For the judge will immediately fasten upon the third, which is the most material; and if he is of a dispassionate, patient temper, he will only give silent intimations to the pleader to make out what he has advanced. But if he is in a hurry, if he is a man of great rank, or if he is peevish in his disposition, he will call upon the advocate with some warmth and rudeness.

Some, therefore, have disapproved of the division which Cicero has introduced into his pleading for

Cluentius, where he proposes to show first, that no party was ever tried for greater crimes, or upon stronger evidence, than Oppiniacus was. Secondly, the precognition was taken against him by the very judges, who had condemned him; and thirdly, that if money was employed, it was employed against, and not for, Cluentius; and the reason they give for their disapprobation is, that if Cicero could have proved the last allegation, the other two were superfluous. But then again, a man must be either foolish or unjust, not to confess that his division in his pleading for Murena is extremely fine. I apprehend, says he, my lords, that this whole charge consists of three parts; the first, as to the immorality of life, the next regards a competition for dignity, and the last, his acts of corruption. Here he lays down the cause in a clear, concise manner, and all the divisions are equally pertinent.

Some do not much like the following manner of dividing: if I killed him, I did no more than I ought to have done, but I did not kill him. For, say they, to what purpose is the first allegation, if the second can be proved? They hamper one another, and while we dwell upon both, we are believed in neither. It must be owned, that this objection has some foundation. And if the second allegation can be proved beyond all contradiction, we ought to rest the defence entirely upon that. But we are to maintain both allegations, in case that we are any way suspicious of the strongest. Judges view matters in different lights. One may think the fact proved, and yet acquit upon the point of law. And another who is dissatisfied with the legality of the action, if proved, may possibly be of opinion that it is not proved. Thus, a good marksman may hit the mark with one arrow, but an indifferent one is to make use

use of more, because, if one misses, another may hit. How nobly does Cicero alledge that Clodius first way-laid Milo, and then he adds, as it were only by the bye, that had not that been the case, the greatest merit, the greatest glory, must have attended the killing of such a wretch as Clodius.

Meanwhile, I am not for condemning the manner of dividing which I first mentioned; because some propositions, though they are shocking, may have the effect of smoothing the way for those that are to follow. It is a shrewd, though common saying, that a chapman, in order to have enough, ought to ask too much. Yet no man of sense, from this, will conclude, that we ought to attempt every thing; for I am of opinion with the Greeks, who lay it down as a rule, never to attempt impossibilities.

But if we should think it expedient to rest our defence on two points, we are to manage so as that our first allegation may serve to strengthen our second. It may possibly happen that a party who boldly confesses one fact, is not suspected when he denies another. As often as we perceive a judge to expect some other evidence, besides that which we are advancing, we are to promise that we will speedily give him full satisfaction, especially if we are speaking to a matter that is scandalous.

But it is often the case that the law may justify a party in a very scandalous cause. In this case we are, again and again, to inform the judges, who hear us perhaps with impatience and disgust, that we will, in the progress of our pleading, vindicate the probity and the character of our client, if they will have but a little patience, and suffer us to proceed in the order we have laid down. Sometimes a pleader is to pretend that he is obliged to speak what his client may dislike, as Cicero does in his pleading for Cluentius,

entius, when he makes mention that a knight was not subject to the penalties of the Sempronian law. Sometimes he is to make a stop, as if he was interrupted by his client. Sometimes he is to address himself to one of the parties. Sometimes he is to beg of his client that he will indulge him in his own method of making his defence; and thereby he may so far win upon the judge, that while he is hoping that the party's honour will be vindicated, he will become more tractable in the knotty points of the cause. When a judge is once impressed with these sentiments, they dispose him more favourably to receive the defence that is offered for a party's moral character. Thus those two manners mutually assist each other. The vindication of the moral character renders a judge more favourable to what we advance in point of law; and when the point of law is once well established, he is inclined to think the better of a party's morals.

But though a division is so far from being always necessary, that it sometimes is needless; yet when it is happily introduced, it throws great lustre and beauty upon a pleading. For it not only renders facts more clear by disentangling them, and laying them out to the view of the judges; but the different stages which it presents, refresh the mind in the same manner, as the mile-stones upon our public roads lessen the fatigue of the traveller. For there is a pleasure in knowing the progress we have made, and when we know how much there is yet to perform, we proceed with the greater spirit and resolution. To know the precise determination of a task is a great means of lessening its fatigue. The chief merit of Quintus Hortensius lay in his artfully dividing his pleading, though it is true, that Cicero sometimes ridicules his manner of counting up upon his

his fingers * the several parts he was to speak to. And indeed in this respect we may very readily exceed, though we ought above all things to guard against a too formal, precise division. Minuteness weakens the authority of a speech, and when divided in that manner, it is disposed, not into parts, but into bits. They who are ambitious of this merit, and court applause from the nicety and frequency of their partitions, are guilty of great superfluity; they fritter away what nature meant should be entire; and do not divide, but mince down, their pleading. The effect of all this is, that when they have chopped it into a thousand bits, they fall into that very obscurity which a division was meant to guard against.

As often as the division is proper, it ought, in the first place, to be plain and perspicuous, (for what is more scandalous, than to fall into obscurity in the very place that is calculated to throw light upon the whole?) In the next place, it ought to be concise, without being loaded with a single expression that can be retrenched; because, while we are dividing, we do no more than point out the order of the matters to which we are to speak.

We are likewise, if possible, to take care that in our division there be neither deficiency nor redundancy. Redundancy is occasioned by dividing into particular, what might have been divided into general, heads. Or by adding the species after mentioning the kind. Thus, virtue is the kind, justice is

* Fingers.] Particularly in his pleading against Cæcilius, "Immortal gods! says he, what confusion, what perplexity, what doubts must the good man fall into, when his antagonist shall begin to digest the different heads of his accusation, and to arrange upon his fingers the principal points of his own defence!"

a particular

a particular species of that kind; and so is modesty; it would therefore be absurd for us to say, "I will speak, my lords, concerning virtue, concerning justice, concerning modesty."

In dividing, we are to distinguish between what is certain and what is contested. Under the first head we are to point out what is admitted by our adversary, and what by ourselves. In dividing the contested part, we are to lay down our reasons and propositions with those of our opponent. But nothing can be more shameful than for a pleader not to pursue the order which he has laid down.

QUINCTILIAN'S INSTITUTES

OF

ELOQUENCE.

BOOK V.

INTRODUCTION.

SOME, and those, too, eminent, authors have been of opinion, that an orator's only business is to inform. They give two reasons why he ought not to touch upon the passions; the first, is, because all perturbation of mind betrays weakness; the second is, because it is unfair to divert a judge from the truth by working him either into compassion, or anger, or any like disposition. And they are of opinion, that to purvey for the pleasure of an audience, when all a speaker's purpose is to get the better of his antagonist, is not only needless in an orator, but unworthy of a man. Other authors, and those the most numerous, without disapproving of an orator's availing himself in this respect, think that his main and proper purpose should be, to establish what he advances himself, and to destroy what is advanced by his antagonist.

Without discovering my own sentiments upon this head, I am certain that the book I am now beginning, will, of all others, be the most useful in

the esteem of both parties, because the whole of it is employed upon the manner of proving and refuting. to which all I have said concerning judicial causes is to be applied. For, the sole purpose either of an introduction, or a narrative, is to prepare the judge; and an information of facts, together with all the methods I have already recommended, would be useless, unless we can establish our proofs, and refute our adversary's. Therefore, of all the five divisions into which I have thrown a pleading, it is possible that some one in four of them may not be essential to the cause. But nothing can be brought into judgment, but what must be supported by proof. The best method I can think upon, for laying down rules upon this head, is by shewing in general what is applicable in all causes, and next, what is peculiar to particular ones.

CHAP. I.

CONCERNING THE DIVISION OF PROOFS.

Proofs are either inartificial, or artificial—Of inartificial Proofs.

ARISTOTLE has been generally followed in the division he has laid down upon this head. He says, there are some proofs that are foreign to the subject an orator speaks upon, and these he calls inartificial proofs; and that others arise from, and are, as it were, begotten by the subject, and these he calls artificial. Amongst the former are ranked prejudgments, reports, extortions by torment, writings, oaths, and witnesses, which constitute most of the causes that come to the bar. But as they require no art in forming them, therefore the greatest powers of eloquence are required either in supporting

supporting or refuting them. The writers, therefore, are highly to blame who have excepted out of the rules of their art, all that kind. It is not my intention, at present, to lay down all that can be said for or against such an exemption. For it would be a work of infinite labour to treat of topics that may be in common to all pleadings; it is sufficient for me to lay down the manner and method of treating them. When I have done this, my reader is not only to exert his utmost ability in applying what I lay down, but in inventing others of the same kind, according to the different causes he is to speak to. For it is impossible to say any thing that is applicable to all kinds of causes, even to those that have happened, to say nothing of those that may happen.

CHAP. II.

CONCERNING PREJUDGMENTS.*

PREJUDGMENTS are of three kinds; the first, which may be more properly termed precedents, consists of similar cases already adjudged, such as when a last will of a father is annulled by the prætor, or confirmed by disinheriting the son. The second kind is properly termed a prejudgment, because it is a sentence pronounced in the same cause. For example, the facts that were prejudged in the case of Oppiniacus, and by the senate against Milo The third kind is when a sentence has been already pronounced in a matter that is appealed,† or brought to a second

* Prejudgments.] These are sometimes termed precognitions, and were of the nature of bills found by our grand juries, or the verdict of a coroner's inquest.

† Appealed.] In some cases that concern personal liberty, or property, an appeal was admitted, and the preceding sentence might have been annulled.

trial.

trial. A prejudgment is chiefly confirmed by two circumstances; first, the authority of those who have pronounced it; and secondly, the similarity of the case with the point in question. They admit likewise of refutation; but a pleader is very seldom to reproach the judges, who have passed the prejudgment, unless they have been palpably to blame. For it is natural for every judge to confirm the sentence of another, lest he should establish a precedent that may affect his own sentences. In such cases, therefore, if the thing will admit of it, we are to point out a dissimilarity in the two causes; and indeed it very seldom happens that two causes are parallel in all respects. But if the prejudgment should happen in the same cause, we are then to have recourse to the neglect of the managers, or we are to complain of the weakness of the party condemned, or of the power of money, or interest, which has corrupted the evidence, or of some matter of hatred or ignorance; or we are to find out something that has happened since the prejudgment, which alters the complexion of the cause. But if we have no room for using any of these means, we still are at liberty to represent, that, in all times, unjust judgments have passed, as appears from the condemnation of a Rutilius,* and the acquittal of a Clodius, and a Catiline. We are likewise to put the judges in mind that they ought to examine the matter simply as it stands, without pinning their conscience to the verdict of another. But, with regard to decrees of the senate, and sentences of sovereign princes and magistrates, I can recommend nothing,

* Rutilius.] He was a man of great virtue, but when he held the government of Asia, he happened to disoblige the Roman knights, who were the monied men of Rome, and they condemned him to banishment. The histories of Clodius and Catiline are well known.

but

but to find out some small variation in the case, or some posterior decree of the same persons, or of those invested with the same powers, which contradicts their former judgment. Unless some one or other of these circumstances occur, the party must submit to be cast.

CHAP. III.

CONCERNING REPORT, OR FAME.

One party treats fame and rumours as implying the consent of the whole state and evidence of the public; others as an idle report invented by rogues and propagated by fools, without its author daring to shew his face. They add, that the most innocent person alive is liable to suffer by such reports, through the malice of his enemies publishing falsehoods. Examples are frequent to justify both allegations.

CHAP. IV.

CONCERNING TORMENTS.

In like manner, matters extorted by torments always present a plentiful field for altercation. One party represents the rack as a necessary means for the coming at the truth by confession: another, as being a motive for false accusations; because the hardiness of some renders a lie easy, and the weakness of others renders it necessary. I shall say no more upon this head. Both ancient and modern pleadings are very full upon the subject. Some peculiar circumstances, however, in this matter, may happen in every case; for, when the rack is produced, it is of importance to know who is to examine, and

and who is to be examined; who the prosecutor is; against whom it is intended; and what is the nature of the cause. If the party has been already put to the rack, we are to inquire who took the examination, who the party was that suffered, and in what manner he was tortured; whether his answers were such as carried probability along with them, whether they were consistent with one another, whether he persevered in what he said at first, or whether he made any alterations through the force of pain; whether he confessed when he was first put upon the rack, or in consequence of his torments. All those considerations are as boundless as is the variety of cases that happen.

CHAP. V.

CONCERNING WRITINGS.

A PLEADER has often occasion (and every pleader often will have occasion), to speak against writings; and daily experience shews us that some of them are not only contestable, but criminal, by being forged. But as this proceeds either from design or ignorance, it is much safer to take the affair up upon the footing of ignorance, because thereby we include fewer parties in the action. But in this case all the proofs lie on the face of the cause; if the deed, for example, which the writing contains, is improbable, or if, as it often happens, it can be disproved by other equally evident proofs: or if the party in whose prejudice the deed was executed, or any of the witnesses can be proved to have been absent or dead before the execution; if the circumstances of time do not agree; if something that happened,

either before or after the execution, has destroyed the intention of the deed; nay, a forgery is often discovered by bare inspection.

CHAP. VI.

CONCERNING AN OATH.

A PARTY at law may offer his own oath, or he may object to that of his antagonist, when offered; or he may require his antagonist's oath, or object to giving his own, when called upon to do it. The cause of a party who offers his own oath, without requiring that of his antagonist, wears generally a bad aspect. The man, however, who does this, ought to hinge upon the purity of his character, which renders it highly improbable that he would perjure himself; or upon some religious scruple; and in this he will succeed the better, if he behaves in such a manner as to appear to be neither forward in offering, nor backward in refusing to give his oath,* or if the matter litigated be of so little importance, that it cannot be presumed the party would damn himself for it; or if, besides the other evidences of the cause, which are sufficient to prove it, he throws in his oath by way of superabundant evidence, and from the consciousness of his own veracity.

When a party refuses to admit the oath of an opponent, he may allege the inequality of the terms, though his opponent disbelieving, and himself be-

* His Oath.] Orig. Ut non cupidè ad hoc descendere, sed ne hoc quidem recusare videatur. Though I have translated this according to the obvious sense of the original, which the Abbé Gedoyn has likewise followed, yet I cannot think it is the meaning of my author, who is not so properly speaking of a party's refusing to give his own oath, as his refusing to admit that of another. I therefore suspect that the latter hoc refers to the oath of the other party.

lieving

lieving in the dispensations of divine justice; nay, that some philosophers have been known to maintain the gods did not concern themselves with human affairs; and that the man who, without being required, offers his evidence upon oath, betrays a slight and a slippery sense of its importance, and, in effect, wants to decide in his own cause.

But the man who refers himself to the oath of his antagonist, seems to act with modesty, by suffering his adversary to decide the cause; and the judge has nothing to charge himself with; because one of the parties chuses to stand by his opponent's rather than his own oath.

Meanwhile, it is a matter of great difficulty for a party to refuse to give his own oath, unless the affair in question be such as that he cannot be supposed in reason to be master of it. If he is cut off from this excuse, he can have recourse only to another, which is, by alleging that his opponent's design is chiefly to render him odious, and to have some pretext to brawl against a decision which he cannot ward off. With regard to himself; that a man of worse principles would embrace the offer, but that he chuses rather to prove what he advances than occasion in the court the smallest suspicion of his being perjured.

When I was young in practice our old lawyers used to lay it down as a rule, never to require our opponent to give his oath. By this we deprived him of the benefit of chusing a judge, nor could the judge be chosen out of our opponent's advocates. For if it is scandalous for a pleader to injure his client by what he speaks, it is equally so to injure him by what he does.

CHAP.

CHAP. VII.

CONCERNING WITNESSES.

MATTERS of proof occasion the greatest trouble to pleaders, and these appear either by written informations, or parole evidence.

It is easiest to deal with the former. For it is presumable* that in the presence only of a few witnesses, a man is under less constraint in betraying truth, than when he is in person in an open court, and that even his absence betrays a diffidence of himself. If the character of the principal party puts him above all reflections of this kind, then we may make free with the characters of the witnesses who sign his information. Against such witnesses a silent intimation lies; that a man who gives evidence by information does it voluntary, by which he confesses that he is an enemy to the party against whom he informs. A pleader, however, when on the prosecuting side may retort to this, that nothing ought to impeach the evidence of a man of credit, when it is offered either for his friend, or against his enemy. This matter, therefore, presents us with a large field of argument on both sides of the question.

With regard to parole evidence, the task is much harder; and therefore upon such occasions we point, as it were, two batteries; one that plays in a set, uninterrupted discourse, and another that discharges only interrogatories. In the former we begin with general observations either for or against the evidence offered. This is likewise one of the common

* Presumable.] Amongst the Romans an affidavit or an oath reduced to writing, required to be signed not only by the party swearing, but by other witnesses present.

fields

fields of arguments; for one party maintains that the evidence which rests upon people's knowledge, is irrefragable proof; while the other advocate, in order to invalidate it, sums up all the arguments he can to shew that the informants may be mistaken. The next method is for a pleader to make his observations, not only upon single witnesses, but upon whole bodies of men. For we know that orators have invalidated the evidences of whole nations, and we discredit all such informations by the lump, as being no better than ouy-dire or hearsay evidence. For we do not admit them to be evidences, but the averments of people who have been injured: thus, in an action* of bribery, the person who swears that

* An action of bribery.] Though I find no edition or commentator has taken notice of this passage, yet I suspect strongly that somewhat here is either misunderstood, misplaced, or interpolated by some over-officious hand. For what reference has the case of an information not taken upon oath, and which, therefore, as our author observes, is to be treated as hearsay evidence, to that of a man becoming a prosecutor in an action of bribery, for having actually given money to the party accused? Perhaps the passage may be made consistent by a very small amendment of the original, by reading, non enim ipsos esse testes, sed *injuriatorum* afferre voces. Nay, this cannot be said to be an alteration, for the word injuriatorum seems by the consent of editors to have been the original reading; but because it is unusual it has been altered into injuratorum, viz. persons not upon oath. And the fondness of editors for this word has occasioned the inconsistency I am taking notice of. Be that as it will, the reading I propose certainly removes it, and in a very natural manner; for the sense then will be, that "when whole nations have lifted up their voices against a public oppressor, they were not considered as evidences, but as hearsays; because it was urged that their voice was that of the people who complained of being injured, and therefore it was not evidence. Thus the evidence (in a prosecution upon corruption) of the man who has actually given money to the accused, is set aside, because he is looked upon as a party in the prosecution." As to the word injuriatus, it is significant, intelligible, and stands in the manuscripts; and, if I mistake not, Seneca makes use of the term injurior, of which injuriatus is evidently the participle. I have, therefore, conformed my translation to the original reading.

he

he himself gave money to the accused person is not looked upon as a witness, but as a party. Sometimes we direct our discourse against each individual evidence. This manner may either contain an invective mixed with a defence, or it may be handled sparately, as Cicero does in his oration against Vatinius.

Let me, therefore, thoroughly canvass this point, as I have proposed to carry an orator through the whole of his education. Otherwise it would be sufficient for him to read the two treatises which Domitius Afer composed upon this head; a professor for whom I had the greatest regard when I was a young man; nay, I not only read what I am now treating of, but received a great deal of it from his own mouth.* With great justice he lays it down as a capital point in the business of an orator, to render himself intimately acquainted with the whole cause he is speaking to. This gives him vast advantages during all the trial. I shall, in a proper place of this work, explain the means by which he may gain this advantage. It is a circumstance that furnishes him with matter for examining evidence, and puts, as it were, weapons into his hand. It likewise instructs him as to the disposition of mind to which, in his pleading, he is to form the judges. For the business of a continued discourse is either to confirm or to diminish the credit of witnesses, because that credit depends, in a great measure, upon the judge's being wrought into a disposition of either believing, or not believing them.

* Mouth.] This shews the mistake which St. Jerom was under in his chronicle, in telling us that Quinctilian was brought in the 211th olympiad from Spain to Rome, by Galba; and that in the eighth year of Domitian, which was the 217th olympiad, he first opened a public school at Rome, and received a salary out of the public treasury.

Now,

Now, witnesses are of two kinds, those who are voluntary, and those who are compelled by the court to give evidence. The first is in common to both parties in a trial, but the prosecutor only is indulged in the latter; let us therefore distinguish between the business of the pleader who brings, and him who refutes a witness.

The party who produces a voluntary witness has the means of knowing what he has to say, and therefore it seems an easy matter to examine him. But even this requires penetration and accuracy; for a witness may be bashful, he may be irresolute and inconsistent, all which must be guarded against. For the advocates of the other party may, in such cases, throw them into confusion, or ensnare them, by which they do their side a great deal more hurt than they could do it service, were they consistent and resolute. An advocate, therefore, is to examine them again and again before they come into court, and he is to try them with all the different questions which he may suppose will be put to them by the other party. By this means they either will be consistent with themselves, or a seasonable question from the pleader who produces them, will set them firm upon their legs, if they should happen to stagger.

We must likewise guard against the traps that may be laid for witnesses who are even consistent with themselves. Very often they are thrown in our way by the opposite party, and, after promising to do us all the service they can, their answers are flatly against us; in which case, their evidence carries with it the authority of one who makes a confession. We are therefore to examine into the motives which a witness has for appearing against a party. Nay, whether, after being enemies, they are become friends; whether a witness may not make his betraying us the price of his reconciliation with

the other party; whether they may not have received money; and whether they have not repented of what they have done. All this is to be diligently guarded against, even when a witness is to say nothing but what he knows to be true, and much more when he is to speak to what he knows to be false. For such are more apt to repent; their promises are more suspicious; and though they should even persevere, it is more easy to detect or to stagger them.

With regard to those witnesses who are compelled to give evidence, they are either disposed, or not disposed, to hurt the party accused. The prosecutor is sometimes sensible of their dispositions, and sometimes he is not sensible.

Let us suppose the former case; yet still the examiner is to proceed with the utmost circumspection and art. If he produces a witness who is all on fire to ruin the party accused, great care ought to be taken that he does not betray an over-eagerness. He is not to be at first abruptly examined upon the very point that is tried, but he is by round-about ways to be conducted so as that the evidence which the examiner chiefly wants him to give, may seem to be wrung from him. Neither are we to press him upon every circumstance that may relate to the trial, lest, by his readiness to answer all questions, he should invalidate his own evidence. No, it is sufficient if his evidence is as full as may be expected to come from a single witness.

As to a witness who is, against his will, brought to give evidence, a pleader's great happiness lies in his forcing him to say what he does not mean to say. The only method of doing this is, by beginning to question him upon matters that seem wide of the cause. In this case he may give answers, which he does not think can affect the cause, and then by recapitulating all he has said, he may be brought into

such a dilemma, as to be unable to deny what he had no intention to say. For as in a pleading, after we have collected all the evidences that seem to have no relation to one another, and which when considered singly, do not seem to affect the accused party, but bear hard upon him when they are collected together and accumulated; in like manner, a witness of this stamp is to be examined again and again, as to what preceded, as to what followed, as to time, place, person, and the like circumstances, so that he may be brought to make answer in such a manner, as to oblige him either to answer in our favour, or to contradict what he had said before. If this does not happen, it is plain that he is to be brought into no avowal. And we are then to amuse him with questions foreign to the cause, so as to catch him tripping, though it be even in an indifferent matter. We may likewise dwell long in examining him upon some single matter of fact, in order to render his evidence suspected by his declaring in favour of the accused, all, and even more than is for his purpose; and by this means he will do him as much prejudice, as he would have done him service, had he confined himself strictly to truth,

Supposing (as I stated in the second place) that an advocate is ignorant of the dispositions of a witness who is to be examined; in that case, we are by degrees, and step by step, as it were, to feel his inclination by our questions, and gradually to lead him to the answer we wish him to give. But because sometimes witnesses are artful enough to answer according to an examiner's mind, that they may, with the more confidence, contradict him afterwards, it is the business of a pleader, when appearing for an impeachment, to finish the examination of a suspected witness as soon as he has given in evidence what makes for the prosecutor's purpose.

As

As for the advocate who appears for the defendant, he has in one respect some advantages over the prosecutor, and in other respects he is under some disadvantages, which his antagonist is not subject to, in examining witnesses. He is under a disadvantage by its being next to impossible for him to know, before trial, what the witness is to say. But then he has the advantage of knowing what he has said, after being questioned. In his state of uncertainty he ought to be extremely cautious and prying into the character of the prosecutor, into the nature and motives of his enmity to the accused; and those ought to be set forth or softened in his pleading, as he sees occasion to represent the witnesses, to be spirited on, by resentment, by envy, by the thirst of popularity, or by the love of money. If the opposite party's witnesses are few, he is to charge the evidence with deficiency; if numerous, he is to represent the prosecution as a conspiracy; if the witnesses are mean, he is to render them despicable; if they are men of consequence, he is to enlarge upon the pernicious influence of power. Meanwhile, he will find his greatest account in exposing the motives of the prosecution, which differ according to the nature of the cause, and the complexion of the prosecutor. For with regard to the allegations against his evidence, which I have already mentioned, his replies are common and ready. Where the witnesses are few and mean, the prosecutor can make a merit of the honest manner in which he goes to work, by bringing no witnesses, but those whom he knew to be well acquainted with the fact in question. With regard to the variety and importance of the witnesses brought, there is no great difficulty to run out in commendation of such evidence.

It is usual to speak in praise of witnesses, and as usual

usual to blacken them, either when their written or parole evidence is offered. This was more practicable and more frequent, in those times when the pleadings upon both sides were finished before the examinations of the evidence began. As to the objections to be brought against witnesses, that depends entirely upon their personal character.

The other manner is that of interrogating; and the main point here is to know the witness. If timid, he may be terrified; if simple, deceived; if passionate, provoked; if ambitious, flattered; and if confused, he may be puzzled. But if a witness happens to be a man of sense and resolution, and, at the same time, your enemy, and sturdy in his manner, you are instantly to dismiss him without any questions, but you may take off the edge from what he has said, by some smart observation; or, if you have an opportunity, you may turn him into ridicule by some humourous remark; and if his morals are liable to censure, the infamy of his life will destroy his credit. It may be for your advantage not to press too far upon a witness who is a man of probity and modesty; for we very often see that such a man may be won over by gentleness, though he may be exasperated by petulancy.

Now, every interrogatory is either confined to the cause, or reaches beyond it. With regard to those confined to the cause, I recommend the same practice I did to the prosecutor; for here the advocate, by putting questions that lie at a distance, and by suiting a following question to a preceding answer, often extorts, against the will of the witness, an evidence that may be of service to his cause. But as to this practice, nothing is more certain, than that it lies beyond the rules and exercises of schools; and depends upon quickness of parts, and experience in practice. But were I to recommend any

any example to be followed, I should recommend the dialogues of the Socratic philosophy, and particularly of Plato; where the interrogations are so arch, that though most of them receive fair answers, yet they come at last to the point which the questioner wants to effect. Sometimes, it is true, it happens by chance, that a witness may be a little inconsistent with himself, and very often one witness contradicts another; but an arch way of interrogating brings on methodically, that which, in other cases, happens fortuitously.

It is likewise usual to put a great many serviceable questions upon matters that reach beyond the cause. For instance, a witness may be examined upon his own life and conversation, and upon those of the other witnesses, whether they are scandalous, whether they are mean, whether they are friends to the prosecutor, or enemies to the defendant, that in such questions they may either let fall somewhat that may be of service to you, or be exposed by prevaricating, or by being over-eager in the prosecution. But, above all things, a pleader ought to be extremely circumspect in the questions he puts; because very often, when the witness is a man of humour, he puts an advocate out of countenance by the smartness of his repartees, and he is sure to have the laugh on his side. The expressions you make use of ought to be plain and familiar, so as that the witness (if, as is often the case, he is a man of no great capacity) may understand you; or, that he may not, by archly pretending not to understand you, turn you into ridicule.

Some execrable practices there are, such as that of sending a suborned witness to sit on an adversary's bench, in order to do him more prejudice when he gives his evidence; or that of just rising from the side of the accused, and giving evidence against

against him; or when a witness speaks what is of advantage to a cause, but industriously destroys all the effects of it, by the airs of extravagance and impudence that he assumes; which not only invalidate what he himself has been saying, but diminish the credit of the evidence of others, which might otherwise be of real service. I mention, I say, all these infamous tricks, not that they may be practised, but guarded against.

It often happens that the written informations * clash with the parole evidence. And this too opens a field for disputation, where one side stands up for the credit of the oath, and the other for that of the subscribers to the information, in which they are unanimous. There is often a difference with regard to the witnesses and the arguments. One side maintains the certainty of the evidence, which is confirmed by the sanctity of an oath, while arguments are to be considered only as the inventions of a fertile brain. The other side represents, that a witness may be influenced by popularity, fear, money, resentment, hatred, friendship, and ambition, but that arguments have their source in the nature of things; that, in the one case, a judge believes his own senses; but, in the other, he gives them up to another person. Such questions are common to a vast number of causes; they often have been, and ever will be, matters of dispute. Sometimes each side brings witnesses, that contradict those of the other; and three considerations are required for determining the judgment. The first regards the characters of the witnesses; Which is the most creditable person? The second arises from the evidence; Which side is given the most probable? The last regards the character of the liti-

* Informations.] From this passage it appears as if those informations had not been taken upon oath.

gating

gating parties; Which party is possessed of most power?

If the reader expects that I am here to mention divine evidences, as they rise from the answers and oracles of the gods, or from omens, I am to inform him that these are handled in two manners. The first is general; and here there is an eternal dispute between the Epicureans and Stoics, upon the existence of a providence * that governs the world. The second manner is special, and regards the particulars of the divine evidence, as applicable to the question in dispute. For oracles admit of one method, both of being established and destroyed; auspices, auguries, dreams, and astrological schemes, of another, because they proceed from entirely different principles.

The establishing or destroying circumstances of this kind, open likewise a large field for pleading. For instance, expressions that proceed from the force of wine, of sleep, or of madness; and discoveries that are made by infants. For there, one party alleges that no imposition enters into the one; and one, that no meaning attends the other. Circumstantial proof has not only great weight, but ought to be called for, whenever omitted in the pleading of our adversary. You gave me money; Who told it out? Where, and when, did I receive it? You accuse me of poison; Where did I buy it? From whom? In what quantity? By whom did I administer it? Who was by? All which circumstances are discussed by Cicero in his pleading for Cluentius, who was accused of poisoning. I have

* Providence.] I am not quite clear that the Stoics admitted the doctrine of a particular providence, therefore our author's meaning must relate to the general providence, or wisdom, by which the system of nature is directed. And the sentiments of the Stoics are not over favourable even to that opinion.

now

now finished, in as few words as possible, what I had to say concerning inartificial proofs.

CHAP. VIII.

CONCERNING ARTIFICIAL PROOFS.

The second kind of proofs, which are entirely artificial, and consist in those circumstances that are proper for engaging the assent, and convincing the mind, is generally either wholly neglected, or very slightly touched upon, by those who, declining the rugged, the thorny paths of argument, love to wanton upon the more gay and delightful spots. Such pleaders resemble those hunters after glory mentioned by the poets, who, intoxicated by the taste of the Lotos, and lulled by the songs of the Syrens, preferred pleasure to safety; and while they were chasing the phantom of glory, were distanced in the race of true glory, which ought to have been their sole aim.

The truth is, the smoothness of language, and the other circumstances by which the stream of a discourse glides so easily along, ought to be considered only as assistants to arguments; or as cosmetics, giving a complexion and plumpness to the skin of that body which is knit and strung with arguments, as the human body is with nerves. Thus, if we happen to touch upon any action that is the result of resentment, fear, or avarice, we are to expatiate a little in describing the effects and nature of the passion. An orator follows the same method when he commends, impeaches, heightens, diminishes, describes, deters, complains, comforts, or exhorts. But its chief effect lies in matters which we have already ascertained, or consider

sider as being undeniable. There is, indeed, some merit in making a speech delightful to the hearer, and great merit when it moves his passions. But those circumstances operate most powerfully, after the judge is fully master of the proof; which it is impossible for him to be, but by arguments, and every other evidence which the nature of the thing admits of.

Before I point out the different sorts of artificial proofs, I think it requisite to mention that certain properties are in common to all proofs. For no question can arise, that does not relate either to a thing or a person. Neither are general topics applicable, but to somewhat that concerns things or persons. These are to be considered either as independent or relative. Neither can there be any confirmation of a proof, but what arises from what went before, from what followed after, or from contradictory circumstances; and they necessarily must happen at a past, present, or a subsequent time. One thing cannot be proved but by another; which must be either greater or less than it, or equal to it.

Arguments arise either from questions that may be considered as detached from all connexion with things and persons, and as existing independently: or they may arise from the cause itself, when something is discovered in it that is different from the common course of reasoning, and peculiar to the question that is to be tried.

With regard to proofs, they may be divided into those that are certain, those that are presumptive, and those that are not inconsistent with themselves. Let me observe farther, that all proofs may be reduced to the four following kinds. Because one thing is, another is not. Thus, It is day, therefore t is not night. Or, because one thing is, another thing

is likewise. Thus, The sun is above the ho- , therefore it is day. Or, because one thing is another is. Thus, It is not night, therefore it r. Or, because one thing is not, another is Thus, The creature is not rational, therefore ıot human. I now pass from generals to par- rs.

CHAP. IX.

CONCERNING PRESUMPTIVE PROOF.

ON the whole, all artificial proof consists, in presumptions, arguments, or examples. sensible that presumptions are generally con- ed with arguments, or evidence; but I have easons for distinguishing them. The first is, se presumptions are almost of the same e with inartificial proofs. For a bloody gar- , a shrieking-out, a discoloured, or a livid, and the like, are evidences of the same kind, itings, reports, and witnesses are; neither ey invented by the orator, but are part of his ctions in a cause. My other reason is, That pesumptions, as cannot be mistaken, amount ıre than arguments; because, when such ap- there can be no dispute. Now, an argument is used but in disputed matters. And a pre- tion that is doubtful, or may be mistaken, is ı argument, but requires arguments to sup- t.

sumptions, therefore, are first to be divided wo sorts; one, where the consequence is ne- y; the other, where it is doubtful.

e first case, I mean that of necessity, scarcely ı within the rules of our art; for, where the

consequence must necessarily follow the presumption, there can be no ground for dispute. Now, this happens in all cases, that necessarily must happen, or have happened; or the reverse; in cases that necessarily cannot have happened, nor can happen afterwards. In all such cases, I say, there can be no room for litigation, but upon the fact.

This kind of presumption is to be examined through all times, past, present, and to come. An example of the past is, When a woman has borne a child, it is a presumption she is no virgin.* An example of the present is, That the sea must roll when it is ruffled by the wind. An example of the future is, That a man must be dead, after his heart is wounded. Nor is it possible, That a crop should arise where no seed has been sowed: That a man should be at Rome and Athens at the same time; Or that he should be wounded with a weapon, without having a scar upon his body.

Some presumptions are, as it were, caught at a rebound. For example, The man who lives breathes, and the man who breathes lives. But the consequence is not always reciprocal; nor can we say, That because the man moves who walks, therefore the man walks who moves. In like manner, It is possible for a woman, who has not had a child, to be a virgin: That there may be a roll of the sea, though it is not ruffled by the wind: and, That a man may die, though he has no wound in his heart.

Some presumptions there are, which have no necessary consequence; and though in themselves they

* Virgin.] The reader may think it a whimsical observation, but I cannot help thinking, that the three examples here brought are strong evidences, or, to speak in our author's terms, presumptions, of the antiquity of the gospel history; unless we suppose, contrary to all credibility, that Quinctilian stumbled upon them by chance. We here see the facts of our Saviour's birth, his miracles, and his resurrection, attacked in the strongest manner.

are

are not decisive in fixing the judgment, yet are very weighty when connected and compared with others.

Some presumptions may be termed indications, or marks, for tracing out a fact in question. Thus, blood being found confirms a suspicion of murder. But, as a man's garment may be bloodied by standing too near a beast that is killed for sacrifice, or by his bleeding at the nose, we are not therefore to conclude, that every man, whose cloaths are bloody, has been guilty of homicide. But, though this presumption, of itself, is of no great weight, yet it becomes very strong, when joined to other circumstances. For example, when it is proved that the accused had threatened the deceased, that he entertained an enmity towards him, and that they were together upon the spot where the deceased's body was found. Now, when a presumption is strengthened by positive proofs of this kind, suspicion then rises, as it were, into certainty. Some presumptive proofs there are, of which both parties may avail themselves, such as discolourings, and swellings, which may equally be the symptoms of crudities as of poison. And a pleader has as much reason to charge the deceased with having given himself the mortal wound, as another has to charge the accused. The strength of such presumptions, therefore, depends on the manner in which they are supported by other proofs.

Hermagoras reckons the following amongst the presumptions that have no necessary consequence. Atalanta is no virgin, because she used to stroll through the woods with young men. But if we admit such circumstances as these to be presumptive proofs, I am afraid we must admit every thing that relates to a fact to be so likewise. And yet such circumstances have been regarded in the light of presumptive

tive evidence, and that too of the strongest kind.* For, when the judges of the Areopagus condemned to death a boy for picking out the eyes of live quails, they must have considered that barbarity as a presumption, or symptom of a disposition horridly cruel, and which, should the boy grow up, would do infinite mischief in society. Upon the same principle, the Romans considered the profuse popularity of Spurius Melius and Marcus Manlius, as symptoms of their ambition to become kings of Rome. But I am afraid that this principle, if too much indulged, may carry us into absurdities. For if a woman is presumed to be an adultress because she washes along with men, she must be presumed to be the same if she eats at table with young gentlemen, nay, if she is intimately familiar with any one. For the same reasons, we may call a smock face, a sauntring air, and a flowing garment, marks of effeminancy and unmanliness, in the same manner as blood is a mark of murder, because they generally attend immodesty; for a mark is properly that, which, our senses tell us, is connected with the matter in question. Prognostics, likewise, are marks, according to the common observation. Virgil† tells us, that the redness of the moon is a sign of wind, and the chattering of the jay of rain. And, indeed, they are rightly termed marks, if their causes are owing to the nature of the air. For, if the moon grows red with wind, that redness is a sign of wind; and if, as the same poet supposes, a condensed thick air makes birds to chatter, we look upon that chattering as a mark of the air's quality. Now, very small matters may

* And that too, &c.] I have been obliged to throw in these words, because I think my author's sense requires them.

† Virgil]——Vento rubet aurea Phœbe. Georg. 1.
—Cornix plena pluviam vocat improba voce. Ibid.

presage great things: for instance, the chattering of the jay, which I have mentioned; nor can it be surprising, that great bodies should furnish intimations, by which we may judge of small ones.

CHAP. X.

CONCERNING ARGUMENTS.

We comprehend, under the term of argument, the ἐνθυμήματα, the ἐπιχειρήματα, and the ἀποδείξεις, of the Greeks; all which, though they differ in their names, are pretty much the same in their sense.

The ἐνθύμημα, which we cannot well express in any other language but the Greek, signifies any conception of the mind; but we are not here to treat of it in that sense. It signifies, likewise, a proposition, with its reason annexed. Its third signification is, a determined conclusion of an argument, either by necessary deductions, or from contrarieties. But authors differ with regard to this matter. For many are of opinion, that nothing is a true enthymema, but that which is founded upon opposition, and therefore some call the first kind I have mentioned an epichirema. Cornificius calls it the argument of contrarieties. Some term it a rhetorical syllogism: others, an imperfect syllogism, because its parts are neither so distinct, nor so numerous, as a logical syllogism is, which is not much required from orators.

Valgius defines the epichirema to be circumstances brought to confirm a proposition. But Celsus thinks that an epichirema does not consist in our expression, but in the matter itself, that is the argument, by which we are to prove a proposition, which we have only in idea, before we cloathe it with words. But others think, that, far from consisting of an argument

ment that is only intended and unfinished, it implies an argument that is, in all respects, perfect and complete. Therefore, properly, and usually, it is taken to be a proof consisting of three propositions. Some have called the epichirema, reason* itself, but Cicero more properly defines it to be reasoning. Which term, however, has relation to a syllogism. For Cicero terms a syllogism a manner of reasoning, and confirms it with some logical examples. And, because there is a resemblance between the syllogism and the epichirema, he is perhaps in the right to blend them together under the same denomination.

Demonstration is evident proof; and such are geometrical demonstrations that are worked by letters. Cæcilius is of opinion that it differs from the epichirema, only in the manner of its conclusion. Whatever may be in this, it is certain all are agreed, that it is a manner of proving a doubtful proposition, by means that are plain and evident; a property that is in common to all arguments, for we never can make use of uncertainties to prove certainties. All those terms amount to no more than a proof of a matter, or the motives of our belief.

The word argument, however, is taken in other senses. The narrative of a dramatic subject or composition is called its argument. And Asconius gives us the arguments of Cicero's orations. When Cicero writes to Brutus, he says, " you were perhaps afraid that I should spoil my treatise upon old age, with something of that kind, though their arguments are very different." Thus we see that every subject of writing is termed an argument. But to pass over this, and several senses of the word, I am to speak of an argument as it implies proof, discovery, credibility,

* Reason.] Quidam epichirema rationem appellaverunt, Cicero melius ratiocinationem

and

and confirmation, all which, I think, relate to one matter.

I take an argument, therefore, to be a method of proof by which one circumstance is collected from another, and a doubtful matter is resolved by means that are certain. From this definition it follows, that in every subject of reasoning there must at least be one certain point, which we are to take for granted. Were it not for this, there could be no footing for the proof of a doubtful matter.

Now every thing is taken for granted that we perceive by our senses, such as those of seeing and hearing; and marks, or symptoms, come under this denomination. Universality of belief, likewise, establishes a certainty. Thus all mankind believe the existence of the gods, and that it is their duty to honour their father and their mother. All legal institutions, all opinions established, though not universally, yet by the practice of the country or state, where the dispute lies, are to be held as established points; for matters of right are generally determined not so much by positive statutes, as by constant and universal custom. We are likewise to take f r granted whatever both parties agree upon, whatever is proved, and whatever is not contradicted by the opposite party. We may form an argument in the following manner. As providence* governs the world, so wisdom ought to govern a state; now we conclude, if providence governs the world, that wisdom ought to govern a state.

A man who handles an argument ought to be extremely well acquainted with it, and the force, the nature, and the effects of every circumstance relative to it. For he is thereby enabled to render it cre-

* Providence.] I have endeavoured to form some kind of an argument out of the original here, but it is extremely perplexed and corrupted.

dible.

dible. Now I distinguish three kinds of credibility; the first is the strongest, because it generally happens; for example, that a parent has a natural affection for his children. The second is more likely to be true than false; for example, a man who is in good health to-day will to-morrow be alive. The third kind is barely not repugnant to credibility; for example, the robbery that has been committed in a house, has been committed by one of the family. Aristotle, in his second book of the art of rhetoric, has a curious dissertation upon the circumstances that generally affect men and things; upon the agreement or disagreement which nature has implanted amongst men and things, and their mutual relation to each other. He has likewise described the characters of the avaricious, the ambitious, and the superstitious man; with all that gives delight to the good, or is pursued by the bad, and the different studies of different ranks of men, such as soldiers, farmers, and the like, with the means of avoiding, or obtaining, the several objects of their aversion or love.

For my own part, I here take my leave of that subject, which is not only tedious, but impracticable, or rather infinite; and the conception of it, besides, depends upon that measure of common sense, with which every man is endued. If any one however desires to be better acquainted with it, he may have recourse to the treatise I have mentioned.

With regard to credibility, upon which the greatest part of all reasoning is built, I shall here give some examples, by which the reader may see how other credible propositions are formed. Is it credible that the son murdered his father? Or, that the father committed incest with the daughter? On the contrary, Whether a step-mother has been guilty of poisoning? Or, an abandoned youth of adultery? We have other examples, Whether it is credible that such

such a villainy should be perpetrated in the face of the whole world? Whether, for a paltry sum of money, such a witness has been guilty of perjury? Now the measure of credibility in each of these examples depends upon each agent here mentioned having generally a peculiar cast of disposition; I say generally, and not always, for then the proposition would cease to be credible, and become certain.*

Let us now beat about the fields of arguments, by which I mean the topics whence they are drawn; though some readers may perhaps think that I have already done that in the examples I have just now given. I call them fields, or topics, not in the general sense of the word, as when they are applied to the subjects of debauchery, adultery, and the like; but I mean the mansions where arguments lie, and are, as it were, concealed, till we bring them to light. For every soil is not proper for every product, and if you are ignorant of the properties of grounds, you never can know where to find wild-fowl or venison. Fishes, in like manner, have their haunts; some kinds love a smooth, and some a rough coast; and some fishes are peculiar to certain climates and countries. Some fishes, frequent in other countries, are not to be found on our coasts. In like manner, it is not every subject that furnishes every sort of argument. Unless we search with skill we cannot succeed but by chance, and consequently we must lose a great deal of travel and a great deal of time in the search. But if we know the properties of every soil; if we know the nature of the fields where argu-

* Certain.] The two first examples here given have little credibility in them; but we are to observe that our author supposes the third example to be very credible, which does no great honour to the general character of Roman stepdames.

ments

ments lie; whenever we come upon the spot it is easy for us to see what it contains.

In the first place then, arguments often arise from persons; all questions, as I have already remarked, having relation to persons and things. Now the motive, the time, the place, the opportunity, the instrument, the manner, and the like, are accidents of things. As to the accidents of persons, I shall not, as some have done, pretend to give a detail of them here, but content myself to point out such of them as furnish us with arguments.

Amongst these I give the first place to BIRTH. For children are generally presumed to resemble their parents and their ancestors; and sometimes their birth is a strong inducement towards their living with credit or discredit in the world.

NATION. For every nation hath peculiar manners and characters; and the Barbarian, the Greek, and the Roman, differ from one another in their ways of thinking.

STATE. Because states likewise differ from one another in their laws, their civil institutions, and their political principles.

SEX. Thus it is more probable a man should be guilty of a robbery upon the high-way, and a woman of poisoning in private.

AGE. Because every age has its own pursuits and pleasures.

EDUCATION AND BREEDING. Because it is of great importance to know under whom and in what manner a person was brought up.

THE BODILY CONSTITUTION OF A PARTY. For very often the complexion of a person is made use of as a presumption of his being lustful, and his strength of his being insolent; and the contrary.

FORTUNE.

FORTUNE. For an allegation may be probable when applied to a rich man, but not, when to a poor one; the former having store of relations, friends, and dependants; and the latter being destitute of them all.

CONDITION. For there is a wide difference between eminence and obscurity; between a magistrate and a private person; between a parent and a child; between a citizen and an alien; between a freed-man and a slave; between a married man and a bachelor; between the man who has children and the man who has none.

THE NATURAL DISPOSITION. For avarice, passion, pity, cruelty, severity, and the like qualities, either strengthen or weaken credibility in certain cases.

STUDIES likewise. The farmer, the lawyer, the merchant, the soldier, the sailor, and the physician, have all of them different ways of thinking and acting.

We are likewise to consult what a party affects; whether his affectation lies in being thought rich or eloquent, just or powerful. We are to regard his past deeds and sayings, because we thereby are enabled to make some estimate of the present.

To these some add commotion, which is defined to be an instantaneous movement of the mind towards anger, fear, or the like. As to designs either present, past, or future, it is true they relate to the person, but yet I am for ranking them amongst the motives that arise from causes, as I would the disposition of mind, by which a man becomes a friend or an enemy.

Some reckon the name amongst personal arguments; but though every person has a name, yet it is seldom that any argument rises from it; unless there is some motive for bestowing upon a man a particular

particular appellation; such as that of, The wise, the great, the rich; or when it suggests certain designs to a man; as when Lentulus entered into the conspiracy of Catiline, because he was of the Cornelian family, and he thought himself the third Cornelius (the other two being Sylla and Cinna), to to whom the Sibylline books and oracles allotted the sovereign power in Rome. I likewise remember that Euripides is guilty of a poor pun, by making one brother upbraid another, whose name in the Greek implied, a dealer in contention; as if his quarrelsome temper had been suited to his name. A pleader, however, has many opportunities of introducing jokes, and Cicero makes frequent use of them in his pleading against Verres. Thus much I thought proper to speak, with regard to persons and the like, but without pretending either in this or any other part of my work, to comprehend every circumstance that may possibly arise from the heads I treat of; all I do is to point out a method, of which an inquisitive student may avail himself in his inquiries.

I now proceed from persons to things; and as actions are most nearly connected with persons, I shall begin with them. Now, in all actions we examine into the motive, the place, the time, the manner, and the agents.

Arguments, therefore, may arise from the causes of an action, whether performed, or to be performed. Now this is a subject which we may divide into two kinds, and make four divisions of each kind. For the cause or motive of actions proceeds either from what is good or what is bad; that we may obtain, improve, preserve, or use the former; or avoid, escape, diminish, or alter the other; for all these considerations have great weight in all our reasonings. But such reasonings arise only from justifiable principles, for all our errors in conduct proceed from

from mistaken opinions, which are occasioned by the false notions we have of good and evil. These give birth to mistakes, and the most pernicious affections, such as anger, hatred, envy, avarice, impatience, ambition, presumptuousness, fear, and the like. Fortuitous circumstances often are added; ignorance, for instance, and drunkenness, which sometimes help to soften, and sometimes to aggravate a charge; thus, if a man is charged with killing one person, while he was endeavouring to compass the destruction of another. We therefore make use of the motives of an action, not only to prove, but to defend a matter that is charged; for instance, when one pleads a justifiable motive for what he has done, or alleges that his action proceeded from a virtuous principle. But I have, in the third book, already handled that subject. Definitions sometimes depend upon motives; for example, Whether a man is guilty of regicide for killing a tyrant* who had caught him in the act of adultery? Whether the action of the man who makes use of weapons that are consecrated in the temple, in order to oppose the invaders of his country, is to be defined sacrilege?

Arguments likewise may arise from the place where an action happened. It may be of great consequence in a cause to examine whether the place was smooth or rugged; whether it lay on the sea-coast, or up in the country; whether it was an inclosure, or a field; whether it was a high-road, or a bye place; whether it was nigh, or at a distance: whether it was convenient, or inconvenient, for the purpose; all which considerations are very strongly laboured by Cicero, in his pleading for Milo. It is

* Tyrant.] This example is omitted both by Rollin and Gedoyn. I suppose it is put in contrast with the other.

true,

true, these, and the liké considerations are oftener conjectural, but they sometimes enter into the matter of law, and are decisive. For example, it may be a decisive point to know whether the place is public or private; consecrated or profane; our own, or belonging to another; or when the question relates to a person, whether a man is a magistrate, a parent, or an alien. For arguments arise from all these considerations. The money, for instance, which you have stolen, is indeed private property, but as you stole it in a temple, you are guilty not of theft, but of sacrilege. You have killed an adulterer, in which you are justified by law, but your action is murder, because you killed him in a privileged place. You have been guilty of a breach of the peace, but by the violence being offered to a magistrate it becomes treasonable. Such like considerations operate by way of defence; for instance, I am justified in what I did, because I was a father, or because I was a magistrate.

But the same arguments that establish a matter of fact, have a strong operation in establishing the point of law. The place likewise is often material in determining the quality of an action. A thing may not always be lawful or decent, when acted in such, or such a place. The particular constitutions of a state, or country, are likewise important considerations, because some countries differ greatly from others in their manners and laws. It is likewise very effectual in recommending ourselves, or in disparaging our adversaries. Thus Ovid makes Ajax say;

> Before these ships my cause am I to plead,
> These ships, from which Ulysses basely fled.

And one of the aggravations of the charge against Milo was, that he had killed Clodius amidst the monuments

numents of the Clodian family. The consideration of place is likewise as important to a pleading as is that of time, of which I am now to speak.

I have already observed that when we mention time, it is done either generally or specially. Generally, as when we say, at this time, in former times, in the time of Alexander, in the time of the siege of Troy. In short, this division comprehends what is past, present, and to come. The special division marks out, whether an action happened in the summer, or the winter; by night, or by day; and it likewise comprehends whatever is accidental, whether it happened during a pestilence, during a war, or during an entertainment, or the like. Now the consideration of time operates in deliberations and pleadings, but in judiciary matters it frequently occurs, and is sometimes decisive: because it may occasion a question of law, it may point out the quality of an action, and is very effectual in establishing a proof; nay, it is a consideration that is sometimes irrefragable. For instance, when it can be proved, that the contracting party was dead before the date of a writing, which he is alleged to have signed. When it can be proved, that a man either was an infant, or not born at the time, when he is said to have executed such a deed. Let me add that most arguments arise from circumstances that either happened before an action, or were connected with it, or subsequent to it. Before you threatened to murder the deceased, you went abroad in the night-time, you met him upon his road. All motives for an action, likewise, belong to the time that is past. But some have refined too much upon the second division of time, as connected with an action. For instance, when a noise, or a cry of murder was heard at the time of an action. As to the subsequent time, you have since absconded; you have fled from justice; the body is swelled and discoloured.

coloured. The defendant likewise is to avail himself of the consideration of time, in order to destroy the charge urged against him. In short this consideration comprehends every thing that is said to be spoken or acted, during the course of a thing that is tried, and that in two manners.

For some actions have a prospect, and some a retrospect. For instance, when a man is accused of pimping his own wife who is very handsome, and it is urged against him, that he married her, that he might get money by letting her out to others, knowing beforehand, that she was a common prostitute. A young rake is accused of murdering his father, and he is charged with having said to him, You never in your life shall reprimand me again. Now, the former is not a pimp for marrying, but he marries because he is a pimp. Nor does the other murder his father, because he dropped that expression; but he dropped that expression, because he had determined to murder him.

As to arguments furnished by accidents, they undoubtedly relate to subsequent circumstances; but they are marked by some property, as when we say, Scipio was a better general than Hannibal, for he conquered Hannibal. Such a man is an excellent pilot, for he never was shipwrecked. Such another is an excellent farmer, for he has large crops. Thus we say, in the reverse, Such a man has been a spendthrift, he has run out his fortune, he has lived in an infamous manner; or, he is universally hated.

In all conjectural matters, the means and ability, which a party has for executing an action, is a main consideration. Thus, we are most apt to believe, "that the many butchered the few; the strong the defenceless; the wakeful the sleeping; the designing the unsuspecting." The following considerations

siderations have likewise great weight in trials. Whether a man had the inclination; and, Whether he had the abilities. For the hopes of success often prompt the will. Thus, we find Cicero stating a conjectural case as follows.* "Clodius, says he, way-laid Milo, and not Milo Clodius. Clodius met him equipped, upon horseback, unattended by his chariot, without any incumbrances, without any of his usual Grecian servants, and, what was more extraordinary, without his wife. While the traitor before you, who had set out with a murderous intention, was riding in a chariot with his wife, muffled up in his cloak, surrounded by a numerous incumbrance of servants, fearful women, and feeble boys." With the means and the abilities, we may connect the instrument; which, indeed, partly furnishes out the abilities, and sometimes gives occasion to very strong presumptions: as for example, When a dead body is found with a person's sword sticking in it.

The manner, likewise, of doing a thing is to be considered; for that regards both the quality of the fact, and the law. For instance, I may have occasion to maintain, That an adulterer ought not to have fallen by poison, but by the sword. The means may likewise aid a conjecture; for instance, were I to say, "that a thing's being done aboveboard, shews it was done with a good intention; or, that a thing has been done with a bad intention, because it was done insidiously, in the night-time, and in a solitary place."

Now, with regard to circumstances, the nature and purport of which are examined independently of persons, and other things that constitute a cause, we are, doubtless, to regard, Whether the thing is?

* Clodius.] The words quoted here in the original by our author, are not the precise words of Cicero, and which I have translated.

what it is? and of what nature it is? But, as each of those considerations suggests the same common matters of argument, I shall forbear running them into subdivisions, and refer them to the several places where they occur.

A definition likewise suggests matter of argument in two manners; for we may examine either directly, Whether an action is virtuous? or, we may previously examine, What is virtue? In like manner, we may define a word in general; for instance, rhetoric is the art of speaking well. Or we may define it circumstantially; rhetoric is the art of forming, arranging, and pronouncing a discourse, with strength of memory, and propriety of action. Sometimes our definition is taken from the property of the thing defined; and sometimes it is expressed in the word. Thus we say, that "a man is finical, from his being over-fine; or, that he is a landed gentleman, from his having store of lands;" and so forth.

Definitions relate chiefly to the kind, the species, the difference, and the property of things; and all these furnish out arguments. The kind does not go far in proving the affirmative of a species, but it goes very far in proving its negative. For instance, A tree is a tree, but that does not prove it to be a plane-tree. On the other hand, If it is not a tree, it consequently cannot be a plane-tree. Such a thing is far from being a virtue, therefore it must be far from being just. We are therefore to proceed from the kind to the most characteristical species. If we say man is an animal, that is not enough, because it does no more than mark out the species. If we add, a mortal animal, we mark, indeed, the species, but it is a species that is in common to other animals. But if we add, a rational animal, that characteristic renders the definition complete.

The species, undoubtedly, on the other hand, marks out the kind, but it does not go so far in disprovin

proving it. Thus, justice is a virtue; but that which is not justice may be a virtue likewise, such as fortitude, continency, and resolution. Therefore the kind ought never to be separated from the species, without separating, from that kind, every species that depends upon it; in this manner, that which is neither immortal, nor mortal, is not an animal.

To the kind, and the species are added properties, and differences; the former establishing, and the latter destroying a definition. A property is that which is peculiar to one subject, such as speech and laughter to man. Or, a thing may have a property, but it may not be peculiar to it; thus, fire warms. One thing may have several properties; fire, for instance, gives light as well as heat. Therefore, whenever a property is wrong applied, the definition is imperfect. And a definition may contain a property without being complete. We very often have occasion to examine into the properties of things; for example, the etymology of the word leads us to conclude that a tyrannicide, properly speaking, is a man who kills a tyrant. But this I deny; for, if a man, by his profession, is an executioner, and if a tyrant is put into his hands in the course of justice, he is no tyrannicide, though he puts him to death. Neither is he a tyrannicide, if he kills him inadvertently, or unwillingly. Now, wherever a property does not answer, a difference must arise. To serve is one thing; to be a slave is another. The following is a point we often handle in cases of those who serve their creditors, till such time as their debts are discharged. A slave, if made free, becomes a freed-man; but that is not the case with regard to the man who is obliged to serve his creditors. We have many instances of the same kind, which I shall treat of in another place.

When we divide the kind into the species, and add somewhat

somewhat that distinguishes the species, we call it a difference. An animal is the kind; mortal is a species; two-legged or four-legged is the difference that distinguishes it from a fish, or a reptile, without either being a property peculiar to any species of animals. This observation, however, is not so useful in arguing, as in assisting us to define accurately.

* Cicero tells us, that a definition is improved by division; but he distinguishes such a division from an oratorial partition, which divides the whole into parts, whereas the other points out each different species of the same kind. He tells us, that the number of parts is uncertain; for example, it is uncertain how many subjects live under one government; but we are certain as to forms. Thus, we know how many sorts of government exist, which are three: one wherein the people, another wherein a few, and a third wherein one man is sovereign. Cicero, who addressed his work to Trebatius, who was a lawyer, chuses to make use of instances from the law, instead of those I have given, and which, I think, are better adapted to common understandings.

Now, properties form part of a conjectural cause. Thus, where a man is a good man, his property is to act uprightly, *and we are to presume that he does*,† as we are, that a passionate man is apt to fall into indecent language. On the other hand, and for the same reason, though drawn from different subjects, we are to presume that there are certain things, of which certain persons are incapable.

Division is equally effectual in proving as in refuting an allegation. In proving it is enough to at-

* I have omitted a few lines of the original, which are neither material nor intelligible; but I durst not venture to follow Mr. Rollin's example, in omitting a great deal more.

† The sense here seems to require the words in italics to be added.

tach

tach yourself to a single part. Thus, you maintain that a man is a Roman citizen, by proving that he either was born, or was made one. But, if you are to destroy this allegation, you must disprove both propositions, and shew, that he neither was born nor was made a Roman citizen. And, as this division may increase, so there is a kind of arguments for removing allegations, by which we sometimes shew the whole to be false; and sometimes that only one allegation, of many, is the true one. We prove the whole to be false in this manner. "You say, you lent this money; now, you must either have had it of your own, or you must have had it from some one, or you must have found it, or you must have stole it; but if you neither had it of your own, nor received it from another, &c. then it is plain you have not lent it." You establish a single allegation, out of many others, which you remove in this manner. "This slave, whom you claim as your's, was either born in your family, or you bought him, or he was given you as a present, or he was taken in war, or he belongs to another person." Then, by removing all the foregoing propositions, you prove the last to be the only true one of the whole.

In divisions of this nature, you must carefully examine the kind, otherwise you may do great prejudice to your cause. For, in laying down your proposition, if you omit any one species arising from the general head, you may ruin the whole of your pleading, and be, at the same time, turned into ridicule. Cicero is very cautious, in this respect, in his pleading for Cecinna. When he puts the question, If it is not a matter of violence that is now to be tried, what is to be tried? Here, at a breath, he removes all allegations. Or, when two incompatible propositions are laid down, yet both equally operat-

ing sufficiently to prove our purpose; an example of which we have in Cicero's pleading for Cluentius.

One thing, says he, my lords, which the greatest enemy Cluentius has must agree in with me, is, if that bench shall appear to have been corrupted, it must have been corrupted either by Habitus or Oppiniacus. If I shew that it was not corrupted by Habitus, it must have been by Oppiniacus. If I shew that it was by Oppiniacus, then I vindicate Habitus.

An argument may be divided into two parts, so as to oblige our adversary to admit one of them, though both are equally hurtful to his cause. Thus Cicero, when he pleads for Oppius; Whether, says he, was the sword wrenched out of his hands upon his attacking Cotta, or when he attempted to kill himself? And in his oration for Varenus, You have, says he, your option to believe that the journey of Varenus was purely accidental, or that it was by the inducement and persuasion of the other. And then he turns both propositions against the impeacher. For example; In disputing against the vanity of philosophy, we discover philosophy. Why are we to make use of a figure if the thing is intelligible? And why should we make use of one, if it is unintelligible? A man will prevaricate upon the rack, if he can endure torments; he will prevaricate if he cannot endure them. I have already mentioned the past, present, and the future, as the three periods of time. I am now to observe, that naturally every action is terminated in three movements as I may call them; for every thing has a beginning, a growth, and an end. First a fray, then bloodshed, then murder. Here, therefore, is a place that supplies us with arguments, which prove one another; for the end is inferred from

from the beginning.* The woof is black, and how can the web be white? On the contrary; Sylla had no ambitious motive in taking up arms, as appears by his resigning the dictatorship. In like manner, arguments may be drawn from the growth of a thing, which may point out its beginning and ending; and that not only in the conjectural state of a cause, but when it turns upon a matter of law; as when we inquire whether the effect does not proceed from the beginning. For instance, Is not the man who began the fray to be considered as the author of the bloodshed that ensued?

Arguments are furnished from similars. For example; If continence be a virtue, abstinence is one also. If a guardian is obliged to find security, an agent ought to do the same. This manner is, by Cicero, termed induction. Arguments are likewise drawn from dissimilars. Though chearfulness is a happiness, pleasure is not. Though you may pay money to a woman grown up, yet you are not to pay it to a minor, without the guardian's order. Arguments likewise arise from contrarieties. Frugality enriches, because luxury impoverishes. If war brings penury, peace will bring plenty. If we ought to pardon the man who hurts us without knowning it, we owe no thanks to him who serves us without designing it. Arguments likewise arise from contradictions: The man who is wise is not a fool. And from consequences, or inferences: if justise is a public benefit, it ought to be administered uprightly. If treachery is an evil we never ought to betray. Each of these propositions may be reversed.

* Orig. Non possum togam prætextam sperare, quum exordium pullum videam.] Though both the sense and the letter of this passage direct us to the meaning which I have given it in the translation, yet it seems to be a proverbial saying, and we are at a loss as to the original propriety of it.

The

The following are of the same nature, and therefore they properly come into this place. A man can never lose a thing he never had. We do not wilfully injure the person we love. If a man intends to make another his heir, he must have loved him, he does love him, and he will love him.

But, as those propositions admit of little or no doubt they are pretty much the same with the infallible presumptions I have already mentioned. The difference (and a minute one it is) is, that the latter are consequential in the nature of things, and the other progressive in the order of facts. As to words, I am not very curious about them. It is sufficient for me, if my reader understands my meaning, that the one is eternal and the other occasional.*

I make no doubt, therefore, that the following arguments will be ranked under the same head, though the consequence follows what is premised. They are of two sorts; first, those regarding action. If he was unable, says Cicero in his pleading for Oppius, to carry them into the province against their wills, how could he, against their wills, detain them there? The next regards time; If, says the same orator in his pleading against Verres, the first day of January was to put an end to the authority of the prætor, why was not that authority to bear date from the same term? Now, those examples are such that, by reversing the propositions they contain, the contrary conclusion will hold good. For if men could not be detained against their will, it follows that they could not be brought against their will.†

* Occasional.] I have translated this paragraph because of its very extraordinary, I will not say useful, refinement. The truth is, our author seems to give it rather as a specimen of his skill in distinguishing, than for any other purpose; and I have translated it with the same intention.

† I have here taken some liberty with the original, which seems not quite consistent with our author's meaning.

Arguments

Arguments likewise which reflect proof upon one another, though some have considered them apart, yet I rank them in the consequential kind. Cicero says, that such arguments arise from matters that come under the same description. For instance, if the Rhodians could honestly farm out their revenues, Hermocreon might honestly be the farmer: the thing that may be taught with honour, may be learned with honour. Under this rank, as it has the same effect, though it is turned in a different manner, I place a fine saying of Domitius Afer; I, my lords, have accused, and you have condemned. Such likewise are the arguments which are mutually consequential, or prove the same thing from different premises. Thus, if we say that the world had a beginning, we must admit that it is to have an ending; because every thing that has had a beginning, must have an end.

Of the same kind are the arguments that prove their effects by their cause, or their cause by their effects; which some call the topic of causes. Now in this manner of reasoning, the consequence sometimes necessarily happens, and sometimes it happens only generally, without a necessity of being implied. For when a body in the light throws out a shadow, wherever the shadow is, that shadow proves a substance to be there." With regard to those that do not follow necessarily, either from the cause, or the effect, or from both together, the following are examples. "The sun discolours, but it does not follow, that it discolours every thing that is discoloured. Travelling is dusty, but it does not follow there is no road that is not dusty, or that every man who is dusty has come off a journey." Examples of real consequences are as follow. "If wisdom makes a man good, the good man is a wise man. From hence we conclude, that a good man

man will act with credit, and a wicked man the reverse. And all who do the first are good men; and all who do the latter are wicked."* A different example is; "Frequent exercise generally renders a man robust; but it does not follow that every man who is robust makes use of frequent exercise." Fortitude takes from us the fear of death; but it does not follow, that every man who has no fear of death has fortitude." "The heat of the sun may make a man's head ache, but it does not follow that the sun is hurtful† to mankind."

The following arguments are suited to the deliberative kind. Virtue gives us glory; therefore we ought to court it: pleasure, infamy; therefore we ought to avoid it. Now we are very properly enjoined not to impute effects to causes too far back, like the old woman in the Medea of Euripides, who imputes the misfortune of her mistress to the first cutting down of wood for the construction of ships. And Philoctetes tells Paris, "had you known how to command your own passions, I had not been thus miserable." This way of retracing causes too re-

* Orig.] Si sapientia bonum virum facit, bonus vir est utique sapiens. Ideoque boni est honeste facere; mali, turpiter: & qui honeste faciunt, boni; qui turpiter, mali recte judicantur.] There is here no great precision of terms, for the passage seems to be quoted from memory, out of some of Cicero's works, and, as usual, has suffered. I have however endeavoured to give the meaning, without deviating from the letter of my author,

† Orig. inutilis] I do not know what the authors of lexicons, dictionaries, translations, &c. may have observed with regard to this word, but I am here, once for all, to acquaint my reader, that the philosophical sense of it, both with Cicero and my author, is not a "thing without advantage, or without profit, but a thing that is against both, a thing that is hurtful, prejudicial, or inconvenient." It is inconceivable what inaccuracies the not attending to this observation has occasioned in the learned world.

mote,

mote, makes the conclusion too fanciful to be ventured upon.

I should think it ridiculous here to rank the conjugated argument, had not Cicero done it; for surely that a just man acts justly, requires no proof. Or that a common ought to be in common.

Arguments are called apposites or comparatives, when the greater is proved by the less, or the less by the greater, or an equal by an equal. In conjectural cases, the less is proved by the greater, in this manner, the man who has been guilty of sacrilege, will be guilty of theft. The greater by the less, in this manner, a ready and a bold liar will not stick at perjury. An equal by an equal, as follows, the man who takes money to give an unjust judgment, will take it to give a false evidence. The same way of arguing holds in legal matters. From the greater; if lities lawful to kill an adulterer, it is lawful likewise to whip him. From the less; if it it lawful to kill a pickpocket, why not to kill a highwayman? From an equal; the punishment inflicted upon paricide is due to matricide.

These arguments are handled syllogistically. But the following are more proper for definitions or qualities. If strength* is not an advantage to bodies, far less is health. If theft is a great wickedness, sacrilege is a greater. If abstinence is a virtue, so is continency. As providence governs the world, so wisdom ought to govern a state. If an architect must proceed by a plan, how regular ought a general or an admiral to be?

* Orig. Si robur corporibus bonum non est, minus sanitas.] I should have ventured with M. Gedoyn, to have translated this passage in a quite different sense, viz. If strength of body is an advantage, health is a much greater. But though two MSS. are without the non, I cannot find that any is without the minus in the original. The example however is applicable as it stands.

Some have subdivided this manner, though I think unnecessarily, for every thing must be either greater or less, or of equal power; and if we stick by this observation, all the farther subdivisions and mincings down are unnecessary; for comparisons are as infinite as the properties that are compared, and there scarce can be a property that is not comparative. For instance, whatever is pleasant, agreeable, virtuous, or useful.—But hold—I am growing loquacious in blaming loquacity.

I shall only bring a few examples out of a great many: from the greater. Cicero says, in his pleading for Cecinna, are we to be surprised that a handful of lawyers were startled at that which terrified a whole army in the field? We have, in his pleading against Clodius and Currio, an example from the most easy; and could you, sir, think of succeeding when a man whose interest you allow to be superior to your's did not succecd? From a more difficult, in his pleading for Ligarius; observe, Tubero, I beg, that I who boldly own what was done by myself, dare not plead guilty to what was done by Ligarius. There is in the same oration another example; shall Ligarius have no reason to hope for himself, while I have room to intercede with you for another? From the less, in his pleading for Cecinna; do you hold it a sufficient proof of violence, that the men were armed, and is it not a sufficient proof when we show they maltreated them?

That I may wind up the matter in a few words; arguments are derived from persons, causes, places, time, means, manner, definition, kind, species, difference, nearness, remoteness, division, beginning, progress, and end; from likeness, unlikeness, contradictions, consequences, efficients, effects, events, connections, and comparisons, which

are

are innumerable. I shall only add, that they are derived not only from facts agreed upon, but from supposed facts, which the Greeks call Hypothesis. Now, all the above-mentioned particulars furnish as many suppositsons as realities, and suppositions are designed to operate in the same manner as realities. For, according to my meaning, a supposition is somewhat proposed, which, taking it for reality, either decides the question, or renders it more easy; and then we are at liberty to show the conformity between the supposed, and the real case.

That young gentlemen, who are upon their studies, may the better comprehend my meaning, I will bring an instance from common life. The law says, whoever does not support his parents, ought to be loaded with irons. A young man does not support them, and yet pleads to be exempted from the penalty; for which purpose he makes use of suppositions, if he was in the army, if he was in his infancy, if he was abroad in the service of his country; supposing any of these cases to be true, he is to be exempted from the penalty. When a man has it in his option to chuse what reward he pleases for delivering his country, supposing he does it, that he himself may seize the government, that he may plunder houses, and ransact temples, what then is the case? Considerations of this kind have great weight in determining the sense of law against its letter.

Cicero, in his pleading for Cluentius, gives us instances of this kind; "If your steward alone drove me out, I cannot be said to have been driven out by your family, but by one of your family. But if you have no servant, but the steward who drove me out, common sense will look upon this as a meer quibble." The same method of supposing

posing is of service when we speak to qualities. Says Cicero, in his pleading for Lucius Muræna, Had Lucius Catiline, with his cabal of ruffians whom he carried along with him, been in a capacity to judge in this affair, he would have condemned Lucius Muræna; if he could he would have killed him. It likewise serves in matters of amplification, Had you done this, says he in his second philippic, in the time of supper, amidst your extravagant debauch of drinking, who would not have thought it scandalous? Says the same orator in his invective against Catiline, had your country a tougue to speak, hear the words in which we may suppose her to accost you.

Such are the general topics from which arguments are drawn. But it is impossible to discuss them minutely, because every topic furnishes inexhaustible funds of arguments. Any one who shall attempt the impossible task, will find himself under two disadvantages; that of saying too much and that of not saying enough. Hence it is that a great many young gentlemen, when bewildered in such inextricable labyrinths, consider themselves as fettered, by the letter of certain rules, and therefore instantly resign all the powers of their own genius, and by following a master, they abandon nature.

For, as it is not sufficient to know in general, that all truths are either derived from persons, or from things, because that general division comprehends an infinity of other divisions; in like manner it is of no great service for a student to know that arguments are drawn from circumstances, that either have preceded, were connected with, or followed an action, unless this knowledge shall lead them to speak whatever is proper to be said in the cause; especially as many proofs arise purely from the complexion of a cause, and are quite independent of all

all other causes. Such independent proofs, let me add, are the strongest, and the least common; and the use of general precepts is to direct us to find out those arguments, that are peculiar to every cause.

This kind of argumentation we call circumstantial, or a proof arising from what is special, or peculiar in a cause, for example, when we plead specially in the cause of an adulterous priest, who sought to save himself because the law gave him the privilege of saving one person. That privilege, sir, may we say, cannot reach to yourself, for should it reach to you, it must save the adultress, because the law does not suffer her to die unless you die likewise, which is the real case.

A law is in force to oblige bankers to pay half of what they owe, but they may call in the whole of their own debts. Now one banker made a demand upon another for the whole of what he owed him. Here the reasoning arises from the peculiarity of the case of the creditor; for the law provides, that a banker may call in the whole of his debts. With regard to others than bankers, there was no occasion for such a law, for every man, though no banker, has a right to demand the whole of what is owing him.

Many new and particular cases arise in the variety of business, especially in cases that are to be decided according to instruments in writing; because words are often subject to ambiguities, and a case may be attended with such circumstances as serve to perplex it more than ambiguities themselves. Such cases are necessarily multiplied by a complication of laws and other written instruments, that are brought either to confirm or to destroy one another. As when one circumstance points out another; and when one matter of law is brought to explain another. Can it be supposed I owe you money, since you never have demanded it, either principal or interest;

est; so far from that, you borrowed money from me? The law says, that the son, who, when his father is accused of treason, does not appear and act in his defence, is to be disinherited. No, says the son, not unless my father is acquitted. But how do you maintain that proposition? Why, because another law says, that a person who is condemned of treason shall, together with his advocate, be sent into banishment.

I am farther to observe, that a pleader is to take as much care of the proposition he lays down, as of its proof. This, if it does not discover the strongest, discovers the preferable, powers of invention. For as weapons are useless to a man who throws them at random, so are arguments to a pleader, unless he foresees how they are to be applied. And this quality is not to be communicated by rules. For this reason, two advocates may be equally knowing in their art, and may make use of much the same arguments, and yet the one may apply them to much better advantage, and with much greater variety than the other. Here I shall state a case of a pretty singular nature.

"Alexander the great having demolished Thebes, "found a bond by which the Thessalians obliged "themselves to repay to the Thebans a thousand* "talents they had borrowed. Alexander was so far "from requiring payment of this bond, that he "gave it up to the Thessalians who served him in "his wars. After the government of Thebes was "re-established by Cassander, they claimed pay-"ment of the money from the Thessalians, and the "matter comes to a hearing before the Amphictions, "the chief counsel in Greece." Here it appeared beyond controversy that the money had been lent, but never recovered. The whole dispute therefore turns

* About a hundred and sixty-five thousand pounds.

upon

upon the validity of the present Alexander made to the Thessalians. It likewise appears, that he did not give them the present in money; we are therefore to examine if his remitting them the bond is not the same thing as his making them a present of the money. Now to what purpose should I beat about for arguments, without first considering how I can prove, that Alexander's gift was no legal deed, that it was an act he could not execute, and that he did not execute it.

To say the truth, the claim of the plaintiffs appears at first in a very strong and favourable light, because the bond was taken from them by force: but have a care,—we are about to touch upon a harsh and a jarring string, I mean the right of war, which the Thessalians will tell you, regulates the constitutions of states and empires; and fixes the bounds of territories. We are therefore to cast about to find in this cause some speciality that makes it different from other causes relating to the right of conquest; and here the difficulty will not lie in the proof you are to bring, but in the proposition you are to lay down.

In the first place, we are to allege, that the right of conquest is no consideration in a matter that is regularly brought into a court of justice; and that whatever is taken by force, can be maintained no otherwise than by force; but that force silences justice, and where justice resides, all violence is out of the question. Now, after we have laid this proposition down, we are to search for arguments to support it. For instance, we are to bring the case of prisoners of war, who are entitled to the privileges of their own country, as soon as they can return to it; because all property acquired by war, must be maintained by the same force that acquired it There is likewise a speciality in this cause, that the bench of

Amphictyones* are to decide it; in the same manner as our courts of a hundred commissioners decide upon different principles, from what a private judge would do in the same cause.

In the second place, it may be insisted upon, that a conqueror has it not in his power to dispose of justice as he thinks proper; that he can possess no more than what he can hold; and that justice, being incorporeal, is not to be held in fetters. This allegation is more difficult to be found out than to be supported by such as the following arguments: "That the tenure of an heritage is very different from that of conquest; because the right remains with the heir, though the property may pass to the victor. That in this cause there is a material consideration; for the right to a loan made upon public credit could not pass to the conqueror, because the people made the loan, whereby it became the right of every individual amongst them; and that while a single Theban remained free, he had a just claim to the whole debt. Now, Alexander had not every individual Theban in his power." This proposition is self-evident, and requires no proof from other circumstances.

The third head a pleader is to go upon in this case is more common. "The bond, he may say, did not give the Thebans a right; it was no more than an evidence of right." And this proposition may be defended by a great variety of arguments. The intention, likewise, of Alexander is very questionable; Whether it was to do them honour, or to

* This was the most reputable court in all Greece; and was composed of commissioners from the different states, who sat at Thermopylæ. Our author's meaning in this passage must be, that so great a court as the Amphictyones in Greece, or the Centumviri at Rome, would not only decide with more courage, but with more equity, as the matter of equity was entirely on the side of the Thebans.

deceive

deceive them. Here he has again recourse to the speciality of the case; and he may make it a matter of fresh controversy, by maintaining, that, even supposing the Thebans to have lost their right, yet they recovered it the moment they recovered their independency. This opens a field of disquisition into the intentions of Cassander. But an orator, of all things, before such a court as that of the Amphictyones, is to avail himself of his eloquence in pleading for the spirit of equity against the quirks of a law.

Had I thought the knowledge of those topicks, that furnish out arguments, useless, I should not have recommended it; but I am against having young gentlemen, after making themselves acquainted with that particular, neglect other requisites of an orator, from a presumption of their being finished and complete masters of the art. Give me leave to say, that, unless they apply to the subsequent parts that I am to communicate, all they learn besides will avail them but little. For the discovery of the arts of speaking did not introduce the establishment of proofs and arguments; no, speaking was practised before it was taught, and, in process of time, writers collected and published their observations, and, from them, rules were formed. For the truth of this, I appeal to their making use of the examples brought from ancient orators. As to themselves, they invent none that are new, none that have not already been in writing. The merit of the composition is owing to the practice of eloquence; but those writers, who have facilitated the study of it, have their merits likewise. For the discoveries which former writers struck out by the force of genius, are all enjoyed, and are all known, by their successors: but what does this knowledge avail? No more than the learning in an academy to

to fence, wrestle, ride, and dance, avails the man who does not put his body in order by exercise, by sobriety, by a proper diet, and above all, by means of an excellent constitution. All which advantages too are in a great measure ineffectual, unless the person knows how to use them.

I am likewise to inform my pupil in eloquence, that every particular I have treated of is not to be found in every cause. Neither is he, when he has got a subject to speak upon, to pore into all the topics and common-places of arguments I have touched upon; he is not to beat about every bush, that he may examine what is for his purpose, and what is not. No; that is a practice only fit for young beginners, and those who have no experience in speaking. Eloquence would be a tedious, nay, an endless study, were we to handle and fumble about every argument, till experience informs us of its powers and purposes; nay, I am not sure whether such a multitude of precepts may not rather embarrass than assist a pleader, unless he is qualified by nature with a quickness of discernment, and with a sagaciousness in study, that carries him directly to the arguments that are best suited to the cause he pleads. For as a fine voice is greatly assisted by its being accompanied with an instrument, so if the hand which touches that instrument be aukward, if it is for ever thrumming and setting the instrument to its proper tone, instead of touching it in a masterly manner, the natural graces of the voice by itself are preferable. Thus, the rules we lay down are only useful by being fitted and adapted to eloquence, as the instrument is to the voice. But it is practice alone that, in this respect, can make us resemble those great masters, who can make their fingers touch every power of harmony, who can call out of an instrument every grave, every sharp,

sharp, every gentle sound it contains, without being puzzled in looking over the notes. A great pleader, in like manner, never is embarrassed by the great number and variety of the arguments that occur to him. No, he naturally falls into them; they throw themselves into his way; and they no more obstruct his passage, than the consideration of letters and syllables retard the pen of a ready writer.

CHAP. XI.

CONCERNING EXAMPLES.

THE third kind of circumstances that are foreign to a cause, and yet enter into it, are called by the Greeks paradigmata; which they generally apply to all comparisons, especially in matters that rest upon historical authority. That which they call a parable, we call a simile; and that which they call a paradigma, we call an example. So they are often used as convertible terms. For my part I shall generally use the word example, to comprehend both. It is true, Cicero makes a distinction between a comparison and an example, for he divides all arguments into two parts, induction and reasoning. The manner in which Socrates excelled had this peculiar property, that, after obliging his antagonist to make a great many concessions of questions he put to him, he brought him at last to admit the very point he wanted to bring him to, or somewhat that is in all respects similar. This is what Cicero calls induction, but it is a manner that cannot be practised in an oration, for there we take as granted every thing that Socrates took by concession. Supposing we are to ask what is the most

most generous fruit: is it not that which has the most exalted qualities? No doubt it is. Which is the best horse? Has not he that has the best blood the greatest perfections? Other questions of the same kind may be put before you come to your main purpose. What do you say as to a man? Has not he who has the greatest perfections the best blood? Undoubtedly he has. In examining witnesses, this manner may do excellent service, but we are to alter it, when applied to a continued discourse. For there the orator is to answer it himself. Which is the most generous fruit? That, to be sure, which has the best qualities. Which is the best horse? He who has the most strength and swiftness, without regard to blood. Is man then the only being who is to value himself upon his blood and not upon his perfections?

Now every thing of this kind must either be similar or dissimilar, or contrary. With regard to similarity, it sometimes serves only for an ornament of speech, and I will treat of it in its proper place. I am now to speak of that which relates to probation. The most effectual of those are what we call examples; by which I mean, the mention of a matter either real or supposed, in that manner which is most conducive to persuade your hearer to agree to what you say. Here you are to consider whether the similarity holds in the whole, or only in a part; that you may make use either of the whole, or only so much of it as is for your purpose. An example of similarity is as follows. Saturninus was justy put to death, so were the Gracchi. An example of dissimilarity is, Brutus put to death his sons for conspiring against their country. Manlius put his son to death for exerting his courage. An example of contrariety is, Marcellus restored the ornaments of their city to the Syracusans, though they were his enemies;

Verres

Verres has stript them of the same ornaments, though they were his allies. In the demonstrative kind they are made use of in the same manner, both to blame and to reproach. Nay, similar examples have a good effect in deliberative cases which regard future events. As for example, suppose an orator should observe, that Dionisius the tyrant demanded guards for his person, that he might employ them in enslaving his subjects. And strengthen it with another example, that Pisistrates domineered over his country in the same manner.

The similarity of some examples, as in the last I have given, holds in every respect. But sometimes they are applied from greater subjects to less, and from less to greater. For example, if whole cities have been demolished for violation of the marriage-bed, how ought the guilty party to be punished? When the musicians retired from the city, they were recalled by an order of the state; then how much stronger reason is there, that men who possess great authority, and have done noble services to their country, should be recalled from exile, when they are obliged to give way to envy! Unequal examples, however, are most prevalent in matters of exhortation. Valour is more admirable in a woman than in a man. Therefore if we are to inspire men with courage, the examples of Horatius and Torquatus are not near so effectual for that purpose, as is the example of the woman by whose hand Pyrrhus was killed. Nor are the examples of Cato or Scipio in their deaths, so prevalent as is that of Lucretia, though it is an example drawn from a less to a greater.

Now I cannot bring examples of all these kinds from any better authority than from Cicero. In his pleading for Murena he says, "For I myself happened to stand in competition with two Patricians,

one

one the most wicked and audacious, the other the most modest and virtuous of mankind; yet in dignity I was superior to Catiline, and in interest to Galba." In his pleading for Milo we have an example of a greater from a less; "They, my lords, deny that a man, who confesses he has killed another, should be suffered to see the sun. In what place do these fools think they are arguing? Surely not in that city, where the first decision in a capital case was upon the life of the brave Horatius! who, before the date of Roman liberty commenced, was acquitted by the assembled comitia of the Roman people, though he confessed that with his own hand he had killed his sister." An example of a less from a greater is in the same pleading. "I have slain, might Milo have said, I have slain not a Spurius Melius, who in a time of scarcity lowered the price of corn, though to the ruin of his own estate, and who was suspected of having an eye to royalty, because of his affecting too great popularity; not a Tiberius Gracchus, who seditiously annulled the authority of his colleague; yet their destroyers have filled the world with the glory of their exploits: but (for the man who saved his country at the hazard of his own life, had a right to use such language) I have slain a man, whose infamous adulteries, our noblest matrons detected even in the most awful recesses of immortal beings, whose punishment the senate often decreed ought to expiate the violation of sacred rights." The whole of Cicero's invective against Clodius is of the same kind.

As to examples from dissimulars, they may be treated in various manners. For many requisites enter into them; such as the kind, the manner, the place, and all the other circumstances by which Cicero overthrows all the presumptions that seemed to bear so hard against Cluentius. In the same ora-

tion, he blames the animadversion of the censors, by way of contrast to the conduct of Scipio Africanus, who, when censor, suffered a person to pass in review with his horse, though he knew him to have been guilty of perjury in open court, and had publicly promised to give evidence against him, but would not, because being censor, he must in that case have been both judge and party. But, to avoid prolixity, I shall not transcribe the words of Cicero.

We have, however, in Virgil, a short example of an argument from contrariety; says he,

You lye—you never from Achilles rose,
He mourn'd my anguish and he felt my woes.

Sometimes we give a narrative at large. Thus Cicero in his oration for Milo; "When a military tribune, says he, a relation of Caius Marius, attempted to pollute the body of a soldier in that general's army; the ravisher was killed by the soldier, who was acquitted by that great man, since the virtuous youth sought to avoid at the hazard of his life, what he could not suffer without the violation of his honour." An intimation is sometimes sufficient; "The great Ahala Servilius, says he in the same pleading, Publius Nasica, Opimius, and the senate, when I was consul, cannot be deemed otherwise than criminal, if it is a crime to put to death the abandoned of our own country." He makes use of that short manner, because the facts he touched upon were well known, and because the interest of his client and his regard for the audience required it.

The same method ought be observed in quoting the fictions of the poets; only they are not of that weight as historical passages. As to the use to be made

made of them, we have it from the same great father and master of eloquence, an instance of it in the same pleading. "Therefore, my lords, it is not without reason that some ingenious writers have, in fabulous histories, informed us, that when a difference in opinion arose with regard to the men who revenged the death of his father, by that of the murderess his mother, the parricide was acquitted by the oracle; an oracle too, my lords, pronounced by the goddess of wisdom herself."

The fables, likewise, that go under Æsop's name (though Hesiod appears to be the original inventor of them), entertain and amuse the mind, especially of country plain people, who sincerely attend to every thing that is marvellous, till the pleasure they have in it wins over their belief. Thus we are told that Menenius Agrippa reconciled the commonalty to the Senate of Rome, by telling them that well-known fable of the discord between the limbs and the belly. And Horace has even deigned in his epistles, to introduce an apologue or fable, To the sick lion once the wily fox. Of the same kind are proverbial expressions, which are a kind of fables in epitome.* I look like an ass under a pack-saddle; a plague upon my drivers.

Next to the example the simile makes an impression; especially that which is formed of circumstances that are almost equal, without any mixture of a foreign matter. "As they who at an election sell their votes (says Cicero in his pleading for Cluentius) are avowed enemies to the candidates that are close-fisted, in like manner those judges came predetermined against the defendant." As to what Cicero calls a comparison, the materials that compose it are farther fetched. "And if they who have already made the harbour after a voyage,

* See Cicero to Atticus, l. 5. ep. 15.

use

use to be very earnest in cautioning those who are setting sail, with regard to tempests, pirates, and shores, because we are, by a natural benevolence, inclined to be concerned for those who are entering upon the dangers which we have just escaped; how deeply affected must I, who have weathered a violent tempest, have now almost made land, be for a man whom I foresee is to encounter the most violent commotions of the state?"

Instances of the same kind are likewise drawn from mute and inanimate beings. Similars, by employing them in this manner, appear differently; it seldom, therefore, happens that we have, in pleading, occasion to draw a ludicrous picture from a similar object, as when Cassius calls out, What fellow is that comes hobbling along like a lame dray-horse? But we often find it proper to employ similars, in order to explain or enforce what we intend. You are to prove that the mind ought to be cultivated, you then compare it to the grounds, which, when neglected, are over-run with thorns and weeds; but when cultured, produce the fruits of the earth in due season. If you are to exhort one to dedicate his services to the public; you touch him with a similitude from bees and ants, which are not only mute but diminutive animals, and yet they labour for the public good. Cicero cloaths a fine sentiment in the same manner. "As a body, says he, without a mind, so is a city without laws, for it cannot properly employ its constituent parts, which are the nerves, the spirits, and the limbs of the body politic." But he employs in his pleading for Cornelius a similitude from horses; and, in that for Archias, one from stones. Some are very obvious, as when we compare an army without a general, to a ship without a steersman.

But

But we may mistake the propriety of our comparisons, and therefore we are to employ them with caution. We are not to say that as a new ship is preferable to an old one, so new friendships are preferable to old ones. We are not to say that as it is a fine quality in a lady to be liberal of her fortune, so it is commendable in her to be liberal of her person. For though the similitude of age and liberality answers, yet the meaning becomes very absurd when the one is applied to friendship and the other to beauty. Therefore in this manner the propriety of the application is the chief consideration.

In the Socratic manner of questioning, which I have already mentioned, great circumspection ought to be used in answering. Thus Æschines, in his Socratic conversation, makes the wife of Xenophon too inconsiderate in her answers to Aspacia. "Tell me, O wife of Xenophon, says Aspacia to her, if your neighbour has richer jewels than you have, which would you have, her's or your own? Her's, replies the other. If her ornamental attire is finer than your's, which would you have, her's or your own? Her's no doubt; she answers again. Now, proceeds Aspacia, if her husband was better than your's, which would you have, her's or your own? Here the lady falls into confusion, and well she might, after being incautious enough to confess her own dishonesty in coveting her neighbour's property. But had her first answer been proper, that she had rather have her own jewels, such as they were, than her neighbour's, she might with decency have answered, that she would rather have her own husband, such as he was, than her neighbour's, though a better man.

Without entering into all the affected nicety, which some professors make use of in this subject, I am here

here to observe, that a fruitful source of argument lies in the similarity, the dissimilarity, and the contrariety of law. Says Cicero in his topics, " If a man has the life-rent of a house, and that house should tumble down, the heir is not obliged to repair it, because if a man has the use of a slave for life, and that slave should die, the heir is not obliged to put another in his room." An example of contrariety is as follows; " the not signing a contract cannot prevent the legality of a marriage, when the parties are agreed to consummate it; for if it is not consummated, it cannot stand, even though the contract is signed." The same orator in his pleading for Cecinna, gives us an example of dissimilarity: " were a man, says he, to drive me from my house with force of arms, the law would give me a remedy, and shall it give me none, if he shall forcibly obstruct my entrance?"

Some distinguish between analogy and similitude; but I think analogy is a species of similitude. For sure there is a similarity, when we say, " as one is to ten, so is ten to a hundred." " A traitor is an enemy." But analogy admits of a farther progression, as when we say, " If it is shameful for a mistress to have a criminal conversation with her slave, it is shameful likewise for a master to have an intrigue with his maid. If pleasure is the end of mute creatures, are we not to account it that of man likewise?" A ready answer to those propositions occurs from dissimilarities. " An intrigue of a master with his maid is very unlike that of a mistress with her slave." " If pleasure is the end of brutes, we are not to conclude it to be the end of rational beings likewise."

Authority is also a part of circumstantial proof. The Greeks look upon certain things as being adjudged points, because they have been the sentiments

ments of nations, people, wise men, eminent citizens, and illustrious poets. Even matters that rest upon general belief, or popular opinion, have their weight. Nay, such circumstances have sometimes perhaps the greater weight, because they are not adapted to any particular purpose, but result from minds free and disinterested, who act and speak in such a manner, because they think it most agreeable to virtue and honour. Were I to bewail the calamities of life, I surely would avail myself of the practice of certain nations who mourned for those that were coming into the world, and rejoiced over those who were going out of it.

Were I to recommend mercy to a judge, would I not very properly mention that Athens, the wisest of all states, looked upon it, not as an affection of the mind, but as an object of adoration? How are we to consider the sayings of the celebrated seven wise men, but as so many rules of life? Were notorious adulteresses to be prosecuted for poisoning, how hard the opinion of Cato bears upon them, who declared that every adulteress was a poisoner likewise? As to quotations from poets, they frequently occur, not only in oratorial, but in philosophical writings. For though philosophers think their own precepts and learning superior to all others, yet have they not disdained to strengthen their authority by poetry. We have a celebrated example to this purpose, when the Megareans, in their contention with the Athenians about Salamis, lost their cause by a verse of Homer importing that Ajax joined his fleet with the Athenians,*

* Athenians.] This was a very extraordinary story. We are told that when the Megereans wanted to recover Salamis, and the controversy was referred to the decision of the Lacedemonians, Solon forged the verse in question, and palmed it upon the judges as one of Homer's, by which the Athenians carried the cause.

though

though that verse is not to be found in all the editions of Homer. Vulgar maxims, because their authors are unknown, have the greater authority, and are received as the general sense of mankind. For example; the man who has wealth has friends; conscience is a wall of brass. An example of this kind occurs in Cicero; as the old proverb has it, like naturally draws to like. Now such sayings as these never would have endured from time immemorial, had they not been universally received as truths.

The authority of the gods, as signified by their oracles, is here ranked, by some, under this division; nay, they have given them the very first place. For instance, the oracle which declares Socrates the wisest of mankind. Instances of this, however, seldom occur: yet Cicero makes use of them in his oration concerning the answers of the Aruspices, and in his invectives against Catiline, when he publicly points to the statue of Jupiter, which stood upon a pedestal hard by. Likewise, in his pleading for Ligarius, he acknowledges Cæsar's to be the more justifiable cause, because it was stamped with the approbation of the gods. These proofs, when they are peculiar to the cause, are termed divine manifestations, but otherwise they are termed arguments.

Sometimes it happens that we serve our client, by catching at some saying or action of a judge, of an antagonist, or an agent for the opposite party. Some, for this reason, have ranked examples of all kinds, and such authorities as I here mention, amongst inartificial proofs, that is, proofs that exist independently of art, and speak for themselves, because they are not invented by the orator, but form part of his instructions. But they are greatly mistaken; for evidences, confessions, writings, and the like, are intimately connected with the cause in question;

tion; but whatever is not so, is of no manner of service, but by the ingenious application of the pleader to the point he goes upon.

CHAP. XII.

CONCERNING THE USE OF ARGUMENTS.

That arguments generally ought to be self-evident, but that they sometimes require to be proved—that we may enforce very strong arguments singly, but weak ones accumulatively—That a bare stating an argument is not sufficient, without being strengthened—Concerning proofs drawn from the passions—Where the strongest arguments ought to come in—A caution against effeminate eloquence.

I AM very sensible, that what I have said concerning proof and evidence may be found in other writings, or from experience itself. I am not vain enough to think myself the only author who has delivered them. So far from that, I beg that my reader would enquire farther, because I am sure he can improve upon what I have said. Meanwhile, the new discoveries he shall make will be found to differ very little from what I have laid down. At present, I am to employ some pains concerning the application and use of arguments.

It is a general opinion, that every argument ought to be so self-evident as to admit of no dispute; because, say they, how can one uncertainty be proved by another? Notwithstanding this opinion, we may advance in proof of a fact certain reasons that require to be proved themselves. For example, thy husband has been murdered by thee, for thou hast been guilty of adultery. Now, in this case, the adultery must be first proved upon the woman, and when the proof of that is once established it becomes a certainty to support a doubtful charge. Your sword

sword was found in the body of the diseased, says the accuser. Not my sword, replies the prisoner. Now, this circumstance must first be proved before you can establish the proof of the charge. One thing is here necessary to be observed, which is, that no proofs are stronger than those that arise from allegations that were before doubtful. You have been guilty of the murder, for your robe was bloody. Now this is an argument which makes a much stronger impression when it is proved, than even when it is confessed. For a party may confess the circumstance, but then a robe may be bloodied by many other accidents than that of murder. But when he denies it, he thereby hinges the whole stress of his defence upon that very fact, and should it be proved upon him, all his other resources can avail him but little, and he must be condemned. For the presumption lies against him, that he never would have denied the fact, had he not given himself over as lost, had he confessed it.

We ought to hinge separately on every argument that is very strong; but we are to collect the weaker ones into a body, because the strength of the former ought to appear to the full, without being darkened by any adjoining object, while the latter, naturally infirm, are supported by one another. Therefore, if they do not prevail by their strength, they may prevail through their numbers, if all of them are intended to establish the proof of the same fact. Supposing a man was to impeach another for killing a relation, that he might enjoy his estate. "You was in hopes to have succeeded to the inheritance, and a great inheritance it was; your circumstances were mean in the world, and at that time, above all others, you was dunned by your creditors; add to this, you had disobliged the person who had made you his heir, and you knew he was about to alter his will." All these

circumstances considered as detached from one another, are light and unaffecting, but when they succeed in a body, though they do not thunderstrike a party, yet they pelt him smartly. Certain arguments there are, that besides being stated must be supported. A pleader alleges, that avarice was the motive of a crime, then he is to shew the force of that passion. He alleges that anger was the motive, then he is to show what pernicious effects that passion has upon mankind; thereby the arguments themselves will come before the court, not only with greater strength, but with greater beauty; for they then will be cloathed so as to hide every nudity, and every imperfection. It is likewise of great importance, when a pleader hinges upon hatred as the motive of a bad action, that he examine thoroughly whether it sprung from envy or resentment, or ambition; whether it was an old grudge, or a late quarrel; whether it lay against an inferior, an equal, or a superior; against an indifferent person or a relation. For all these circumstances are to be differently handled so as that we may apply them to the service of our client in the most advantageous manner. Yet are we not to load a judge with all the arguments we are capable of inventing, for we thereby will both tire out his patience and raise his mistrust. For a judge must suspect the validity of an argument which we think we can never enough press home. For where a matter is clear it is as absurd to be lavish of our arguments as it would be to endeavour to enlighten the sun with a common taper.

Here some rank the pathetic manner of arguing, which depends upon moving the passions. Of these Aristotle thinks the most powerful to be the intrinsic virtue of a man himself; and then follows at a great distance, our making a client appear to be an excellent person. Hence proceeded that noble defence

fence of Scaurus: "Quintus Varius, my lords, said he, charges Æmilius Scaurus with treason against the people of Rome, and Æmilius Scaurus denies his charge." Somewhat resembling this was the defence made by Iphicrates, who questioned Aristophon, who had accused him of the like crime, whether he would have betrayed his country for money. The other answering in the negative; So, then, replied Iphicrates, the crime that you would not have committed, I have committed. But we are carefully to examine both into the disposition of the judge, and what will most readily win his assent, of which matter we have already treated on different occasions.

There is a positive way of speaking, which does great service in arguing. "I did so. You told me so yourself, horrible action!" and so forth. This manner ought to enter into every pleading, otherwise it must suffer. Meanwhile, we are to lay no great stress upon it, because it is equally open to both sides. I have greater confidence to place in proofs which are drawn entirely from the person of a party, and contains some probable averrment. For instance, It is highly presumable, that a man who has been wounded, or whose son has been murdered, would prosecute no other than the guilty person, because, by prosecuting the innocent, he gives the guilty an opportunity to escape. The same kind of presumptions serve fathers in their pleadings against their sons, and kindsmen against kinsmen.

It has been considered by some, whether the strongest arguments should not be placed in the very front of a discourse, so as to seize at once the assent of the hearer; or in the rear, that they may make the stronger impression: or whether we should not observe Homer's method in drawing up his army when he places the strongest in the front and rear, and the weakest in the middle; or whether our reasoning

soning ought to rise gradually from our weakest arguments to the strongest. In my opinion, this question can only be determined by the nature of the cause. But still, in all causes, and by all means, we should keep our pleading from sinking from what is strong to what is trifling; from what is masterly to what is mean.

Thus I have, in treating this subject, endeavoured as concisely as possible, to point out the topics, and the common places from which arguments are drawn, without falling into the idle manner of some, who have attempted to shew the particular and precise manner in which every thing may be spoke to from common places. It is sufficient, if the reader, from what I have recommended, knows how to speak upon envy, avarice, malicious evidence, powerful friends, and the like. But to think of exhausting the subject, is as ridiculous as it would be for me to attempt to write a diary of all the law-suits that are now depending, or ever shall depend, with an account of all the points, arguments, and opinions, arising in them. It is true, I will not pretend to have pointed out every source of argumentation, but I will be bold to say, there are few I have not pointed out. To this I applied myself the more industriously, because those declamations with which we use to exercise ourselves, as fencers do with foils, before we can come to real action at the bar, have long been void of every quality that resembles true pleading.

All their purpose is to delight, for they have no force; and their practice, by heavens, resembles that of slave-merchants, who cut from boys their virility, that they may improve their beauty. These fellows think that strength and muscles, and more especially a beard, and the other marks which nature has imprinted upon manhood, spoil the delicacy

delicacy of shape and face; and considering vigor as rusticity, they soften it down against the intention of providence. In like manner, we throw the tender complexion of delicacy over all our speeches, and thereby hide all the manly grace and affecting energy of eloquence. All we search, all we seek, is to be trim and sparkling; as to force and efficacy, they are with us no considerations.

But when I consider the beauties of real nature, I think that every man, be he ever so little of a man, is more beautiful than the handsomest eunuch, who has not a string of virility about him; for I cannot imagine that providence ever disliked its own works so much, as to rank weakness amongst the excellencies of mankind. Should nature make an eunuch, he would be a monster; and shall I think him a beauty because he is made so by the amputating knife? Let such infamous traders avail themselves as much as they can, in debasing and belying nature; but may we never see a bad taste so predominant as to bring us to think, that whatever is costly thereby becomes valuable. However degenerated lolling audiences may approve of this effeminate titillating eloquence, yet I am not afraid of saying that I never can consider that to be eloquence, which is void of the smallest symptom either of health or manhood, or of wisdom or virtue. Let us consider the practice of the greatest statuaries and * painters, who in moulding

* Painters.] This is a very fine observation of our author, and holds just with every artist of taste to this day. At the same time, delicacy and strength are united in the finest compositions of antiquity, whether in poems, orations, paintings, or statues. The Æneid of Virgil, if wrote in prose, would be the justest composition in the world, both as to disposition and sentiment; and were it void of both, nay, of all meaning, yet it must be still the most harmonious that ever was produced. Cicero's

moulding their finest figures, never take the models by which they are to execute their pieces from

cero's pleading for Milo, if its merit were to be estimated from the force of the reasons it contains, must be the most convincing piece of reasoning ever pronounced; and, if from the expressions and periods, the most pleasing. The Apollo of the Belvidere is the firmest, and yet the finest figure that ever was beheld, and the Venus de Medices has the greatest strength, as well as the greatest delicacy, in its composition. In short, I am not sure whether this union I am talking of is not the true criterion of the fine arts, and whether the dispute between the antients and the moderns, is not to be determined according to the degrees of success which each has had in it. With regard to common life, it is plain, the manners, the habits, and the discipline of the antients were better calculated than those of the moderns are, to reconcile gracefulness to strength, both in behaviour and person; and the ideas of beauty, especially female beauty, were much juster amongst the antients than amongst the moderns, except in one or two painters of the Roman school. With regard to eloquence, I know no modern composition that has united the two qualities I have mentioned. Some of the French preachers and pleaders have eloquence, but being destitute of nerves it is no more than declamation. The English have great strength in speaking, but have neglected eloquence (see note * p. 111.) at least the study of it, for the strokes of it we find scattered about in their sermons and pleadings, result either from chance or genius. Mr. Rollin in his way of teaching the belles lettres vol. 2. has been at great pains to produce from the French writings, examples of the several figures and manners that are practised in eloquence, and seems to put the writings of his countrymen on the same footing with those of the Greeks and Romans. But though I have an opinion of his ability as a professor, he shows in this respect too much of the Frenchman. Eloquence is not to be considered in detached pieces, but from the full force and result of the whole discourse or composition. Flechier, Bossuet, and several other French writers have undoubtedly great detached beauties, but like the perfections of rope-dancers, they have no noble purpose; all they do is to amuse. The true orator unites eloquence with reasoning, and they are so blended together, that it is impossible to discern which affects us most. Even those pieces of Cicero, which come nearest to declamation, had their purposes, and great and noble purposes they were. His oration of thanks for Marcellus is wholly turned in persuading Cæsar to make a glorious use of his successes, by restoring the constitution of his country, and his

from eunuchs, such as a Bagaos* or a Megabysus, but from the person of some vigorous Doripho-

his pleading for Ligarius is as full of the argumentative as of the pathetic kind. His magnificent recommendations of Pompey, and his other friends, are all immediately connected with his subject. And thus his eloquence reflects lustre upon his reasoning, and his reasoning supplies matter to his eloquence.

But eloquence, as generally employed in the French pulpits and their academies, has no manner of purpose, but that which is here so justly inveighed against by our author, and therefore deserves no better term than that of declamation. The funeral orations, which are the finest specimens of French eloquence, have no manner of purpose but parade; and though the beauties of eloquence may be displayed in such compositions, yet her powers cannot; because little or nothing of the persuasive kind enters into them.

Notwithstanding what I have said, I cannot help being of opinion, that English preachers have too much neglected the study even of the declamatory part of eloquence. My reason is because few who attend a christian sermon, require to be convinced by dint of argument of the truths of christianity; therefore all that a preacher has to do, is to make such an impression upon their passions, as may influence their practice. This is what a christian preacher may do consistently with the dignity of his profession, but it is next to impossible he can do it without a commanding and an affecting eloquence.

Father Bourdelaou is a noble instance of the kind I am now describing; his sermons are greatly adapted to the passions, and wonderful were their effects upon the minds of his hearers; while at the same time, the closeness of a Tillotson, the reasoning of a Barrow, and the smoothness of an Atterbury, though all united together, would have left them unaffected, perhaps unimproved. But what do I speak of a Bourdelaou who had true eloquence? Do we not see the effects of its very appearance, or even the effects towards it, in the success of the meanest and the most illiterate enthusiasts? What an engine then must it be in the hands of a man of sense, taste, and discernment, who, with every advantage that an enthusiast can have, has learning, truth, and virtue on his side.

* Bagaos, Megabysus, Doriphorus.] The two former were celebrated eunuchs, and their names became common appellations of that species. The latter was a life-guard-man, from whose person the greats tatuary Polycletus formed the model of a very fine figure, which afterwards was copied by Lycippus.

rus,

rus, of some one who is fitted for the exercises of the academy and the field; and from the bodies of youths practised in war and wrestling; for in such alone they think that true beauty is to be found. And shall we, who propose to form an orator, arm him, not with the thunder, but the thrillings of eloquence?

No, let the pupil I train up do all he can to copy after the great originals of truth and nature; and when, in order to fit himself for real encounters at the bar, he aspires at conquest in the school, let him, even there, be always endeavouring either to aim or to parry a mortal blow; and while he is guarding his own, let every thrust be at the vitals of his adversary. Let professors inculcate this practice, let them make it the standard, by which they estimate or reward the proficiency of their pupils. Young gentlemen may, from applause, be led into a wrong manner, but then applause will lead them into a right manner too. The misery of our modern practice is, that the most necessary parts of eloquence are not so much as mentioned; and his talking to the purpose is not considered as an accomplishment of an orator. Though I fully handled this subject in another* work, yet I shall often touch upon it in this. But I am to return to the order I proposed.

* Another work.] Meaning his treatise concerning the causes of corrupted eloquence.

CHAP.

CHAP. XIII.

CONCERNING REFUTATION.

Defending more difficult than Prosecuting.—The best Method of Defending.—Of accumulated and separate Defences.—A flat Denial, in what Case proper.—The great Ends of a Defence.—Its common Places, or Topics.—Of representing an Adversary's expressions.—Of explaining the Matter, either totally or in part. Of Arguments common, inconsistent, and faulty.—Cautions against over Keenness and Anxiety.—That a Pleader be well acquainted where the stress of his Cause lies.

REFUTATION is of two kinds; one that runs through the whole of a defendant's pleading; the other, which consists in answering objections; which is common to both parties. This properly holds the fourth place in a pleading; but both are handled in the same manner. For here the principles of arguing are the same with those of the probatory part; the topics, the sentiments, expressions, and figures, are the same; with this difference, that refutation has very little share in touching the passions.

It is, however, certain (and we have Cicero's repeated evidence for it), that it is more difficult to defend than to prosecute. In the first place, the business of a prosecutor is plain and simple; he has but one way of laying his charge; and it may require a thousand ways to refute it. It is generally sufficient that the charge which a prosecutor urges be true; while, upon the defendant lies all the business of denying, defending, setting aside, excusing, deprecating, softening, diminishing, warding off, dispising and deriding. The part, therefore, he has to act, is generally indirect and clamorous, and besides strength of lungs, it requires a thousand veerings and shiftings. Add to this, that the prosecutor brings

brings every thing ready studied into court, while the defendant must often answer off hand. The prosecutor produces his witnesses, while the defendant must refute them upon the spot. The prosecutor, however unjust his charge may be, yet is furnished with matter for speaking from its odiousness, whether it consist of parracide, sacrilege, or treason, or the like crimes; while all that a defendant frequently has to offer in answer, is a bare negative. Very indifferent pleaders, therefore, have succeeded as prosecutors, but no man, unless he was an excellent orator, was ever known to succeed in defending. Nay, in short, I will venture to say, and I say it sincerely, the difference between accusing and defending is the same, as between inflicting a wound and curing it.

Now, it is very material for a defendant to know what the charge of his adversary is, and in what terms it is conceived. In the first place, he is to consider whether the matter he is to answer belongs to the question in debate, or whether it is not foreign to it. For if it belongs to it, it must be either denied or justified, or set aside, which three are the only methods of defence, that a cause generally admits of. As to moving compassion, when we come to that, we abandon all defence, which we seldom do, but before judges, whose decisions are not tied down to the forms of law. Yet Cicero, in his pleadings before Cæsar and the triumvirs, in favour of men of different political parties, though he makes use of entreaties, yet is far from abandoning their defence in point of justice. For did he not insist upon a strong point of defence when he said, "What, my friend, did we do, but wish to be masters of Cæsar, as he now is of us?"

If we are, therefore, to plead before a sovereign prince, or one who has no rule, but his own pleasure, to

to follow in his determination, we may represent that our client is indeed worthy to suffer death, but that the more guilty he is, there will be the more glory in forgiving him. But here we are first to consider that we are not opposing an antagonist, but pleading before a judge: and next, that our manner of speaking should partake more of the deliberative than the judiciary kind. Thus we are to represent how much more glorious a character it is to exert humanity than to gratify revenge. But with regard to judges whose sentence must be directed by the letter of the law, confession is condemnation, and therefore it would be ridiculous for me to lay down any rules on that head. Upon the whole, therefore, in such cases, when a thing can neither be denied nor set aside, we have no choice left, but either to defend them at all hazards or to throw up our cause.

I have already shewn the two methods by which an allegation may be denied, I mean, either by maintaining that nothing happened, or that the thing did not happen as alleged. Those points which we can neither defend nor set aside, we are flatly to deny. I do not mean only a denial by defining them so as to alter their complexion in our favour, but in cases where nothing but a flat denial is left us. Supposing witnesses are against you; a great deal may be said against the credit of witnesses. Supposing your own hand-writing is brought against you; we have known very artful forgeries of hand-writing. In short, nothing is more fatal than confession. When neither defending nor denying can avail you, then your last and only resource is to set the whole process aside, by alleging an error in the proceedings.

It may however be said, there are some causes that can neither be denied not defended, nor be set aside.

aside. For example, the woman that is brought to bed a year after the death of her husband, is accused of adultery. In this case there can be no litigation. Therefore it is foolish to enjoin, that we ought to be silent as to every thing that can be defended, because that very silence is sufficient grounds for the judge to decree against us. But if any thing foreign shall be offered, though with the allegation of its being immediately connected with the cause, I should chuse in that case to say, that it had no relation to the question, that it is idle to spend time about it, and that it is not of the importance my antagonist pretends. In such a case an appearance of neglect is very pardonable; and a good advocate needs to be afraid of no reflexions of that kind, while he acts for the benefit of his client.

The next consideration I am to touch upon, is whether in making a defence we are to attempt to repel the charges accumulatively, or singly. In such a case we are to repel them accumulatively, if they are so weak as to be borne down all at once; or if they are so galling, that we dare not encounter them singly. For then we are to use our utmost efforts, and as it were, to shut our eyes, and fight away. Sometimes our adversary's proofs may be too stubborn to be refuted, and then we ought to compare our arguments with his, provided we can do it in such a manner, as that the advantage may seem to lie on our side.

As to arguments that are powerful only by their number, we are to take them to pieces singly, one by one. In the instance, you was his heir, you was poor, you was dunned for a large sum by your creditors, you had disobliged him, and you knew he was about to alter his will. All these presumptions coming in a body have weight. But if you encounter them one by one, the flame, that from accumulated

umulated materials threatened a conflagration, lwindles away when you withhold its nourishment; r, like a large river, it becomes fordable at any lace, when branched out into separate rills.

The method we follow therefore, ought to be accommodated to our own conveniency. Sometimes t may be proper to examine our adversary's allegations separately, and sometimes accumulatively. or sometimes it is sufficient to make a general state f that which our opponent has collected from a variety of circumstances. For instance, if he shall llege a great many motives that might have induced the defendant to have been guilty of the crime harged upon him; we may, without following him hrough every particular, deny it in general, by deiring the court to consider, that a man's having a notive to commit a crime is no proof of his having ommitted it. But it is most generally convenient or a prosecutor to urge his charge accumulatively, nd for a defendant to examine the several parts of t singly.

It is however incumbent upon him to examine, in vhat manner he can most properly refute the prosecutor's charge; for if a direct falsehood is advanced flat denial is sufficient. Thus Cicero in his pleading or Cluentius, speaking of the person whom the prosecutor said died after he had drank out of a cup, lleged to be envenomed, denies that he died the ame day. Matters likewise that are directly inconistent with themselves, or superfluous, or idle, or oolish, come within no system; and therefore, with egard to them, I shall lay down neither rules nor xamples. A fact likewise alleged to be done in he dark, secretly, and when nobody was by, and hat has neither proof nor presumption to support it, lestroys itself, and it is sufficient for our purpose,

that

that our opponent does not prove it, We may say the same thing with regard to matters that are foreign to the question. It is, however, sometimes the business of a pleader to turn allegations in such a manner, as that they may appear contradictory, foreign to the cause, incredible, or idle; nay, so as that they may seem favourable to us. It was objected to Oppius, that he defrauded his soldiers of their pay and their perquisites. This was a home-charge; but Cicero shows that there was an inconsistency in it, because the same prosecutors charged Oppius with an attempt to corrupt his army with money. The prosecutor promises to bring evidence against Cornelius, that the declaration was read by the tribune. Cicero shows that would be to no purpose, because Cornelius acknowledged the fact. Quintus Cæcilius solicited the office of prosecuting Verres, and the reason he gave for it was, because he had been quæstor to Verres; but Cicero shows that very reason to be a good one, why he should not be admitted to prosecute.

Other methods of refutation, that do not come under the above description, are to be referred to common places. For they are to be examined either by conjecture, whether they are true; or by a definition, whether it is proper; or by quality, whether an action is dishonourable, unjust, dishonest, inhuman, cruel, and the like; this method ought to be observed not only in the propositions and reasons advanced by the opponent, but through the whole course of the action: whether a man has been cruel, as Cicero charges Labienus with being, because he prosecuted Rabirius upon an action of high-treason: whether he is inhuman, as the same orator alleges Tubero to have been, because he prosecuted Ligarius, and endeavoured to prevail with Cæsar not

to

to pardon him. Whether he is proud and passionate, like him who accused Oppius upon a simple letter of Cotta.

Some allegations may be proved to be rash, insiduous, and frivolous. But the strongest kind you can hinge upon is that, which, if admitted, may affect a whole body of men. Says Cicero in his pleading for Tullius: "Was it ever laid down as a maxim, or could it ever be granted without endangering the whole community, that one man is to kill another merely because he is apprehensive that that man may kill him?" A matter may affect even the judges themselves in its consequences; as Cicero, in his pleading for Oppius, takes a great deal of pains to prove how the bench may be affected by admitting a prosecution for corruption against the equestrian order.

An orator, however, sometimes may very happily affect to despise certain allegations, as being either frivolous, or foreign to the cause. This is very common with Cicero. Nay, this affectation sometimes has its effect by our seeming to trample on, and kick about an argument, which in reality we cannot answer.

However, as most part of this practice is drawn from the topics of similarity, we are to search with great exactness (if we are to answer them), to find out some dissimilarity. This in matters of law is easily done; for laws being composed upon particular occasions, the application of them to different things cannot in all respects hold. As to similarities drawn from brute-animals or inanimated objects, it is easy to set them aside; and various are the manners by which we can defend ourselves, when a similarity or a precedent bears too hard upon us. If it is drawn from antiquity, we are to treat it as fabulous. If it is too well established to admit of

a doubt, we are to show that it has no resemblance * to our case; and indeed it is almost impossible that any precedent should answer in every respect. Supposing for instance, that after Scipio Nasica killed Gracchus, he had been defended upon the precedent of Ahala, who killed Spurius Melius. A pleader might have shown, that Melius aspired to sovereignty, but all that Gracchus did was to prefer some popular laws. That Ahala was a great magistrate, and Nasica a private person. Had all those arguments failed him, then he must have endeavoured to prove that the action of Ahala was unjustifiable. What I have said with regard to precedents of facts, will hold with regard to precedents of law and equity.

I observed that it is material to attend to the manner in which a prosecutor expresses himself. My meaning is, if his expressions are weak and ineffectual, we are to make use of his own words. If they are keen and strong, we are to soften them in our own representation of the same matter. Thus Cicero when he pleads for Cornelius, who was accused of forcing the writing out of the hands of the proper officer, he touched the writing, says he. In defending a young rake, he is charged, says he, with being a little too gay in his way of living. In like manner, we may soften avarice into economy, and railing into freedom of speech. One thing we ought carefully to avoid; never to represent our opponent's state of the question with his manner of proving it, nor to take it up upon the same topics except to turn it into ridicule. Says Cicero in his oration for Muræna, in the person of an opponent, "Have you served me so many years in the army, without coming near the forum? Have you now, though

* The original here is confused and doubtful.

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at such a distance of time, come to dispute a point of precedency with those who have dwelt in the forum?" Sometimes a whole charge is exposed by the contradictions it contains. Thus Cicero, pleading for Scaurus against Bostaris, put himself in the person of his antagonist. Sometimes we gain our end by joining several propositions together, as in Cicero's pleading for Varenus; "After he had journeyed through countries and desolate places, with Populenus, they said, they then fell in with the slaves of Ancharis; that Populenus was then killed, and that Varenus was kept there in chains, till this gentleman's pleasure should be known."

This method is by all means to be observed, where there is a series of improbable allegations, that shocks all credibility, even in relating them. Sometimes we may remove separately allegations that hurt us accumulatively, and indeed that method is generally the most safe. We have likewise many instances of contradictions in a single proposition.

Common-places may be very properly employed in refutation, not only because both parties may avail themselves of them, but because they are commonly most serviceable to the defendant. I must repeat it, that a prosecutor is in the wrong, if he urges any thing from a common-place, because it may be then turned against himself by his adversary. "Is it improbable, my lords, says Cicero, in one of his pleadings, that Marcus Cotta ever thought on such a villainy? And is it not equally improbable that Oppius ever attempted it?"

None but a great master knows how to find out in an opponent's pleading either real or seeming inconsistencies. Sometimes they appear upon the very face of a cause. Thus, in the prosecution commenced against Cælius, Cicero in his defence of him represents the inconsistency of the prosecution;

"Clodia, says he, alleges she lent Cælius money; this, no doubt, was a proof of great friendship; she says, that Cælius attempted to poison her, but that, doubtless, is a sign of the most inveterate hatred." "Tubero accuses Ligarius with being in Africa, when at the same time he complains that he was not suffered to attend him thither."

Sometimes a defendant gets great advantages from the prosecutor's inadvertency in his pleading. This happens chiefly to those who are so fond of sparkling sentiments, that they allure them from considering their propriety or impropriety, because they mind only the immediate passage, and not what ought to be the general tenor of their pleading. What could be more prejudicial to Cluentius, than his being branded by censorial authority? What could bear harder upon him than Egnatius disinheriting his son for being concerned with Cluentius in corrupting the judges that condemned Oppiniacus. But Cicero shows how these charges destroy one another. "But you, Accius, will I hope seriously examine which judgment ought to have most weight, that of the censor, or that of Egnatius. If you give the preference to that of Egnatius, the censorial judgment of the others must go for little or nothing, for they expelled from the senate this very Egnatius, whom you represent to be so virtuous a person. But if you give the preference to the censorial judgment, I am to observe, that when the father disinherited his son for corrupting the judges, the censors kept the son in the senate, while they expelled the father."

It requires no great degree of penetration to guard against the following faults. Never to lay the whole stress of your pleading upon a point that may fail you: never to admit or advance a disputable point, as being an acknowledged one; nor a general proposition,

sition, as if it was peculiar to your cause: or to urge a proposition that is too vulgar, idle, that stands in a wrong place, or is incredible. Incautious prosecutors are apt to fall into these mistakes; they aggravate a charge before they prove it; they dispute concerning the commission of a fact, when they ought to be inquiring after its author; they attempt impossibilities, and they leave a matter as proved, though they have but just begun to touch upon it; they attack a man's person, without minding the cause, and endeavour to bring whole constitutions into disrepute, on account of the misconduct of some particular members; in the same manner as if one was to rail against the decemvirate, instead of Appius. They dispute irrefragable proofs; they speak in a manner that admits of a different meaning; they lose sight of the main question, nor do they follow, in order, the propositions that are laid down. This last practice, however, is defensible in one case, and that is, when a cause is so very bad that it can be supported only by foreign aids. For example, if a Verres is accused of oppression, his advocate is to display his courage and care in defending Sicily against the pirates.

The same rules will serve us against the objections which we are to encounter; and I am the more ready to make this observation, because a great many pleaders are, in this respect, under two mistakes. For some, even at the bar, omit it as a matter that is troublesome and painful; and generally contenting themselves with the arguments they have studied at home, they talk away as if they had no opponent. This absurdity is still more prevalent in schools, where they not only omit to mention all contradictions, but the very subjects they chuse are of such a nature, as to leave no room for taking notice of any thing urged by the other side. Others, over-scrupulously,

pulously, think that they are obliged to answer the least sentence, the least hint that is thrown out by the opponent; a practice that is both endless and needless; for there we attack the pleader, and not his cause. For my part, I shall never grudge my opponent the praise of being a well-spoken man, if the good things he says are attributed to the quickness of his parts, and not to the merits of his cause; and if all the slips he makes are attributed to the badness of his cause, and not to the blunders of his understanding.

When Cicero therefore reproaches a Rullus for the obscurity of his birth, a Piso for the stupidity of his discourse, an Antony for his childish ignorance and brutal behaviour, he is fired with personal resentment, which serves to draw down hatred upon those against whom he is inveighing. But an advocate at the bar must proceed in another manner. Sometimes, however, he very properly may reproach an antagonist for his discourse, his morals, nay, for his looks, his air, and his dress. Thus Cicero carries those reproaches against Quintius so far, that he takes notice of the folds of his robe floating about his heels. Meanwhile we are to observe, that Cicero had a personal pique at Quintius, for the turbulent assemblies he had raised against Cluentius. Sometimes an invective may lose all its force by being turned into ridicule. Thus, when Triarius objected to Scaurus that his marble columns were carried in waggons through the city; "Triarius is in the right," says Cicero, "for I bring my columns from the Alban quarries upon pack-saddles."

This method is best practised by the defendant's advocate, whose concern for his client gives him sometimes a right to make use of stinging speeches. There is, however, a general and well-grounded complaint against a lawyer, if through malice he suppresses,

presses, shortens, darkens, or misplaces any material circumstance. There is often, likewise, reason to complain when a defence is made that has no relation to the charge. Accius, in prosecuting Cluentius, and Æschines in prosecuting Ctesiphon, complain of this practice; the former against Cicero, for sheltering his client under the letter of the law alone; the other against Demosthenes, for not speaking a single word of the law.

I am, however, to admonish gentlemen, especially such as deal in declamation, never to make use of such objections as are easily answered, and not to suppose that their antagonist is a mere fool. Now the common practice is to chuse a subject that admits frequent applications from common places, and sparkling sentiments, which we can mould and turn as we please; which puts me in mind of a verse,

> The answer's nonsense---That we all admit;
> But, nonsense only could th' objection fit.

This custom raises very often great inconveniencies when we come to the bar, where our business is to answer our antagonist, and not ourselves. It is said that when Accius the poet was asked why he did not come and plead at the bar, since he had such wonderful energy and persuasion in his composition, his answer was, "That in his tragedies he made his characters speak what he pleased, but at the bar, the characters he had to do with, would speak the very reverse of what he pleased." It is therefore a ridiculous practice in our exercises that are previous to real pleadings at the bar, to be thinking of a reply to a weak objection, before we examine into the whole of what may be said against us. And a good professor of rhetoric will give as much praise to a pupil who is sharp-sighted in finding out what his

his adversary may say, as he will to one who is accurate in finding out what he can say himself. It is true, in schools, we are always to make some allowances of this kind, but seldom at the bar. For in a real action how can the prosecutor, who is to speak first, know how to answer the defendant, who has, as yet, not spoken at all?

Most gentlemen, however, fall into this absurdity, either through a declamatory habit or through a rage of speaking, and thereby furnish their antagonist with very pretty occasions to rally them, and to turn them into ridicule. Sometimes by telling them that what they said amounted to nothing at all, that their meaning was quite different to what it had been represented. Sometimes they will thank their antagonist for putting them in mind, and own themselves obliged to him for assisting them. But their keenest jokes are cut upon their opponent's not answering a syllable of the strongest part of their pleading, which he never would have omitted doing had not his conscience told him it was true and unanswerable; and that, therefore, by his silence he confessed it. An example of this we have in Cicero's pleading for Cluentius; "You have told us again and again that you are apprised of my design of sheltering my client under the expressions of the law. Ha! is it so then? Have our friends been weak and wicked enough to betray us? How hard it is that our antagonist should get into all our secrets by means of those whom we take to be our friends! But give me leave to ask you who gave you this information? Who was such a scoundrel to do it? To whom did I impart this design of mine? No, now I think of it, nobody is to blame, for you received your information from the law itself." Some pleaders, not contented with contradicting, will even exhaust a whole topic. They will tell you that they

know their antagonist will insist so and so, and that they will bring such and such proofs. Vibius Crispus, a person of great wit and humour, handsomely ridiculed a pleader, in my time, who fell into this practice. For my part, says he, these are points I do not speak to, for what purpose serves it, to say the same thing over and over again?

We may previously venture to contradict an opponent, if he values himself too much upon what he advances upon written evidence; for then we answer his averments, and not our own suppositions. Or, if the cause is of such a nature, as that we can go upon certain grounds, because they are the only ones that possibly can be laid down. For instance, stolen goods are found in a man's house, and he is thereupon prosecuted. In such a case, the only defence he can possibly make, is to say, they were brought thither without his knowledge, or that they were deposited in his hands, or that he got them in a present.

Now a prosecutor may answer all these allegations even before they are made. With regard to the practice in schools, it is very right we should obviate contradictions, even before they are made, because we thereby accustom ourselves to act in both capacites, that of prosecutor, and that of defendant. Unless it is when we pursue this practice, we never ought to answer objections before they are stated, because, if we do, we answer that which never was alleged.

Pleaders are apt to fall into another absurdity, that of an over-eagerness, even to a degree of embarrassing themselves, while they are straining and puzzled with every trivial circumstance; for a conduct like this raises suspicions in the mind of a judge; and very often a thing that, had it been hit off at once by a pleader, might have been decisive in his favour, loses all credit by his stopping and stammering; because a judge will think that he considered his cause

to

to require such pains. An orator, therefore, ought always to speak with assurance, and in such a manner as may discover the highest confidence in the merits of his cause. This, amongst others, is a great excellency in Cicero. He talks with such confidence, as if he were sure of carrying his point, and with so commanding an air, that it supplies the place of proof; for we dare not even venture to question what he says.

A pleader, who is sensible of the strong points both of his own and his adversary's cause, will readily judge what particulars he is to answer, and what to urge. In this case, the order he is to observe is extremely easy; for if we are the prosecutors, we are first to establish our own proofs, and then we are to reply to what has been urged against them. If we are the defendants, we are to set out with refuting the other party. But, in solving one difficulty, or replying to one contradiction, other difficulties and other contradictions may arise, and sometimes others upon the back of them. Thus, in the shows of gladiators, when the dispute is obstinate between the scholars of two fencing-schools, the combatants are multiplied to decide it.

I have already mentioned a method of proof, that consists entirely in a single affirmation, or denial, upon the principle of the consciousness that is within our own breasts; such as that of Scaurus against Varius. I am not even sure whether this manner is not most proper for the refutation. Both parties ought carefully to examine where the stress of the cause lies; for it often happens that a great many allegations and particulars, enter into a cause, though the material points, by which it is to be determined, are but few.

Upon those material points the whole practice of proving and refuting ought to turn; but all must be strengthened and embellished by the art and address

dress of the orator. For, however strong, however plausible, our arguments may be, yet still their complexion must be sickly, if they are not urged home by the commanding energy of the speaker. This, this, strikes the deep impression upon the minds of the judges, when he comes to speak from common places, upon witnesses, writings, proofs, and the like. And likewise when he speaks more particularly in praising or blaming an action, in setting forth the justice or injustice of a transaction, in exaggerating or diminishing; when he speaks with vehemence or with mildness.

Some of these places are applicable to single arguments, others to accumulated proofs, and others are suited to the whole tenor of the pleading. Some of them are adapted for preparing the minds of the judges, others for confirming them. Now, preparation and confirmation both sometimes run through the whole of a cause, sometimes they are fitted for one particular part of it, and sometimes they are diffused, according as conveniency may direct.

It has been a question agitated with great eagerness, between the two leaders of the two sects of rhetoricians, I mean Theodorus and Apollodorus, whether these common-places, or topics, should with Theodorus, run through every particular question; or whether, with Apollodorus, we ought to inform the judgment, before we attempt to move the passions. I am, therefore, surprised that no middle way has been pointed out, which is to be observed according as the nature of the cause requires; but no such thing has ever been mentioned. The teachers of systems are not the men who have the greatest experience of practice at the bar; and we know that an order of battle may be drawn up in a warm room and an easy chair, which may be thrown into confusion by the smallest accident during the fight.

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In my opinion, I agree with the generality of authors, in thinking that the epichirema consists of three parts at most. The nature of things requires, that a proposition should first be laid down, that it should be followed by a proof, and that proof by the consequence resulting from both.

An example of an epichirema consisting of five parts, is found in Cicero, as follows; those affairs that are managed by wisdom are better governed than those that are void of it. This some call the first part, or the proposition, and they are of opinion that it ought to be supported with various reasons, and the most significant expressions. For my own part, I think that all that makes but one and the same proposition; otherwise, if the reason forms a part of itself as there are various reasons, so there must be various propositions. We now come to the assumption, or the minor. Now, nothing is better governed than the system of the world. But this minor must be supported by a proof, which forms the fourth part of the epichirema; and I set that part aside for the same reason as before. The consequence forms the fifth part, and consists of the result of all the other parts, the world therefore is governed by wisdom. Thus, when the proposition and assumption are immediately connected, the result of the whole is expressed in this manner: "Those affairs that are managed by wisdom are better governed than those that are void of it; now nothing is better governed than the system of the world; the world therefore is governed by wisdom."

The three constitutent parts of the epichirema, however, that I have laid down, vary in their forms, for sometimes the proposition and conclusion are the same. "The mind is immortal, for whatever is self-motive is immortal; now the mind is self-motive, therefore the mind is immortal." This manner

manner prevails not only in single arguments, but through the whole of causes and debates that turn upon one proposition. For in all such matters, a leading proposition is laid down, which is the subject matter of contest. Says one party, "you have been guilty of sacrilege, for you have killed a man." Says the other, "If I have killed a man, it does not therefore follow that I am guilty of sacrilege." Then follows the reasoning, which is more diffused in causes and trials than in single arguments. Next comes the conclusion, or the result of the whole, either by summing it up singly, or by drawing from it a general consequence.

There is another kind of consequence, which does not contain the very words, but the meaning, of the proposition. The thoughts of death ought not to concern us, for no consciousness can attend a dissolution of our frame; and where there is no consciousness, there can be no concern. There is another kind, in which the proposition is not the same with the conclusion. Every thing animated is more excellent than that which is inanimated; now nothing is more excellent than the world; the world is therefore animated." Here the dispute seems to turn upon the matter proposed, which may be laid down in the following terms: "The world is animated, because what is animated is preferable to what is inanimated." Now the proposition is either self-evident, as in the last example but one, or it requires proof; for instance, "Whoever wishes to live happily ought to commence philosopher." This point is not self-evident, and, till that is settled, the consequences cannot fairly be drawn. Sometimes the assumption or the minor is self-evident; for example, "All men wish to live happily." Sometimes it requires to be proved; "No consciousness can attend the dissolution of our frame." Here it may be disputed whether the

Sometimes the proposition may be true, and the reason false. Virtue makes us happy, is a true proposition; because it makes us rich, is a false reason. Now a conclusion may be disputed, for not arising from what is premised; or it may be disputed, by pretending that it is no part of the matter in hand. An example of the former is, "We have a right to kill the man who way-lays us: the man who attacks us, as an enemy, ought to be repelled as an enemy. Milo therefore had a right to kill Clodius, as his enemy." Here, I say, the conclusion is false, because we have not yet proved that Clodius was the way-layer. But if we keep the proposition in general terms, the conclusion is right. "That we have a right to kill the man, as an enemy, who way-lays us." But this is saying nothing to the purpose, before you make it out that Clodius way-laid Milo. Upon the whole, a true consequence may arise, though the proposition and reasoning be false; but if the proposition and reason be true, the consequence* never can be false.

Some have defined the enthymema to be a syllogism; and others, part of an oratorial syllogism; because there can be no syllogism without a proposition and conclusion, and unless the whole of it is directed to establish the proposition; whereas the enthymema supposes, but does not express, the proposition. The following is an example of a syllogism; "Virtue is the only good, for that only can be good which nobody can abuse. Nobody can abuse virtue; virtue therefore is the only good." An enthymema would mention only the consequence; "Virtue is a good, which nobody can abuse." By a contrary way of reasoning I would say, "Money is not a good, for that cannot be a good which every one may abuse; now every one may abuse money,

* The original here is very perplexed.

therefore money cannot be a good." The enthymema expresses the same thing by inconsistencies; "Can money which every one may abuse be a good."

We speak syllogistically in the following manner; "If the money which is coined is silver, the person who leaves by his will all his silver to another, leaves him the money that is coined; now this person did leave him all his silver; and therefore he left him all his silver that was coined." An orator would say the same thing in the following manner; "by leaving him all his silver, he left him the silver that was coined."

Having thus, I hope, unlocked the sacred mysteries of this art, I am now to offer a word by way of advice, concerning the prudent management of them. As I see no reason why in pleadings we may not make use of syllogisms, neither do I think it proper they should be flourished perpetually with epichiremas and enthymemas. This would make an oration too much resemble formal, logical, disputations, which are far from being adapted to the purpose of an orator, such as I want to form. Men of learning, who associate with one another that they may come at truth, weigh every thing with the utmost precision and exactness, and bring every matter to as much certainty as it will admit of. They, therefore, assume to themselves the profession of inventing and judging, or what they call the argumentative and critical parts of knowledge. Our compositions must be adapted to other kinds of capacities. Sometimes we must speak to those who are ignorant of all erudition, or, at least, ignorant of every thing but what relates to this study. Unless we allure such by the beauties, and force them along by the energy of eloquence, nay, sometimes touch every passion of their souls: let us have truth, right, and justice upon our side, yet all will go for nothing.

Eloquence requires to be ornamented as well as to be rich; but she can be neither, if minced into certain conclusions that have a regularity of the return and a sameness of composition. She can then attract nothing but contempt for her meanness; aversion for her scurrility; loathing for her exuberance; and disgust at her stiffness. Let her career, therefore, lie through the open fields; let it not be confined to the beaten path. Let her not pour like water through a pipe, no, let her roll on like a fair spread river; let her deluge whole valeys; and when she cannot find her way, let her force it. What is more wretched than to see orators following a certain rule, and like school-boys, as it were, tracing a copy marked out with a pencil. Or, as the Greeks say, "ever wrapping themselves in the robes that were given them by their mother, without venturing upon a change of attire." May not a proposition and a conclusion, arising sometimes from consequences and sometimes from contrarieties; may they not, I say, be so formed, as to animate and elevate the hearer, so as to please by a thousand different turns and figures, so as to appear to be formed by nature, not laboured by learning; to be the product of the soil, and not the manufacture of art? What true orator ever spoke the language of logicians? Even Demosthenes, close and concise as he is, is extremely sparing of that manner. We excel the Greeks in every mischief that can be done to eloquence, except in their catching up their enthymemas, and epichiremas, then stringing them upon a logical thread, and tying them together so as never to be unravelled; while, all along, they are advancing what none can deny, and proving what all must acknowledge; then telling you with a grave face, that therein they imitate the antients. But ask them who those antients were, and they are at a stand. I am, however,

however, to treat of the figures of speech in another place.

I will add farther, that I disapprove of those who, in arguing, require only a style that is perspicuous and plain, without being copious or ornamented. It is true, perspicuity and plainness ought to be the first considerations, and all matters of little consequence ought to be treated in expressions that are plain, familiar, and suited to the subject. But when we talk upon an elevated subject, I think no ornament, that does not darken it, should be omitted; for metaphors often give a propriety to expression, and throw great light upon a subject.*

I am likewise to recommend to an orator, that the more barren a subject is to which he speaks, the more he ought to endeavour to ornament it by the charms of expression; and the more rotten his reasoning is, the greater ought the beauties to be in which it is dressed; always remembering, that the man who is quite pleased is more than half persuaded. Perhaps, indeed, we may think that Cicero went too far, when, in the argumentative part of his pleading for Milo, he says, "that the laws were silenced where arms prevail;" and tells us at the same time, "that the laws† themselves sometimes put into our hands the sword, which is to shed the blood of man." A mean, however, must be observed in all

* Subject.] Our author, in the original, gives us an arch example of this after Cicero, who tells us, that the lawyers defined litus to be qua fluctus eludit. But as the original has various readings, and as the definition is insipid, even in the Latin, I have not translated it.

† Laws.] Our author certainly here meant to expose the false criticisms that prevailed in his time, for there is no manner of impropriety in what Cicero here says; nay, the most exact propriety is observed; for he represents the law, though silent, yet as stretching forth the sword of offence and defence, upon certain occasions.

such

such liberties: and they ought to be so managed, as to embellish, not to embarrass a pleading.*

* Pleading.] The conclusion of this as well as the former chapter is extremely beautiful; and yet some readers may think it an absurdity in our author to lay down so many rules and figures, which in fact he confesses to be in a great measures useless. We are, however, to consider, that his professed purpose is, to leave nothing unsaid, that can tend to form an orator; but, at the same time to caution him against the injudicious use of many expedients, that become hurtful when abused.

QUINCTILIAN'S INSTITUTES

OF

ELOQUENCE.

BOOK VI.

INTRODUCTION.*

IN WHICH HE EXPRESSES THE AGONIES OF HIS MIND FOR THE LOSS OF HIS CHILDREN AND WIFE.

ADDRESSED TO MARCELLUS VICTOR.

YOUR commands, my friend, chiefly concurring with my inclination to serve well disposed youth, prevailed

* Introduction.] The Abbé Gedoyn, the French translator of our author, is so much of a Frenchman as to think this introduction, which he calls a peroration, an example of the precepts he is about to inculcate; and it is, says he, in this light chiefly that it can give us pleasure. And M. Rollin, though he does not, indeed, find fault with the composition, yet, upon several occasions, he falls foul of our author, as talking, in this introduction, like a mere heathen.

A fine taste is certainly indispensable, either in a scholar or a gentleman; but I cannot help thinking that the abuse of the expression is of infinite prejudice to works of genius. The French academy, in laying down rules for acquiring what they call a fine taste, never dreamed there could be any perfection beyond the works of Homer, Virgil, and other eminent writers of antiquity. From this prejudice they adapted all their rules, they circumscribed all their notions, and confined all their practice to the writings

prevailed on me to undertake this work; which, of late, the duties of my function have obliged me most assiduously to attend. At the same time, I own I had an eye towards gratifying my own pleasure, in leaving to my son, my son, whose promising genius claimed all the cares of a tender parent, this work, as the most valuable legacy I could bequeath. So that, if the fates had been so just and so kind, as to shorten my days, he still might have had his father for his guide and his instructor.

writings of the ancients; without considering there were boundless realms of genius yet unexplored, and, perhaps, without hearing of a Shakespear or a Milton. Hence it is, that whatever is uncommonly beautiful, sublime, or descriptive, is stigmatised by those gentlemen of taste, as being forced, unnatural, and whimsical.

The composition before us is so exquisitely fine, that it is no wonder it drew from the abbé, who was one of the pillars of the French academy, the reproach of being mere declamation, if it was not intended as an example of our author's rules. But, si vis me flere, dolendum est tibi. It is impossible for ought but real anguish to wring from a father and a husband the expressive distress that appears through the whole of this introduction. Every tender touch, every animated sentiment must have faded and disappeared, under any enditing but that of real misery. The reader, perhaps, may have some pleasure in comparing the sentiments of Quinctilian and Cicero upon the like occasion; I mean, when the latter lost his daughter, whom he bewails in his epistles to Atticus and his other friends. I cannot, however, help thinking, there is more of the true pathetic in our author. A melancholy carelessness is visible through the whole of this introduction, and it affects even the spirit of the reader. His expressions, though proper, are striking; and, though uncommon, natural. And, had not the whole been dictated by the deepest grief, nothing could have made a more ridiculous figure.

As to M. Rollin's charge of impiety against our author, I am very ready to admit it, and that he really was no better than a heathen; but I believe, that even Christian writers, nay, the scriptures themselves furnish us with some escapes of the same nature with those charged upon our author, and which are beautiful and affecting, when we consider them as extorted by the force of misery.

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But, while day and night I was applying to finish it; while I was earnestly forwarding it, for fear of being overtaken by death, fortune at once laid me so low, that all the result of my labours profits none less than myself. Yes! a repeated blow of fate put out the light of my life, by taking from me my darling son, the pride of my flattering hopes, the prop of my bending age. Whither now shall I turn me, since the gods have cursed me so, that I am become a burthen to the earth? With such another blow was I struck when I began to write the treatise I published upon the causes of corrupted eloquence.

Happy had I been had I then flung upon the funeral pile, which immaturely was to consume the dearest part of me, that inauspicious work, and all my little stock of unhappy learning; for then I had not cherished this unnatural* survivency; I then had not reserved myself to taste of deeper anguish. What affectionate father could ever pardon my insensibility, should I be capable to pursue my studies? What parent will not detest me, should I now find any other employment for my tongue, than

* Unnatural.] One of our author's commentators takes notice, with some wit, that the original of this introduction is so depraved, that it seems as if Quinctilian's tears had effaced what he wrote. The original here is, impiam vivacitatem, which Rollin thinks may be taken for vivacity of genius; but, I think, it is more natural to understand it in the obvious sense of the word, as I have translated it.

The word impia, however, though overlooked, seems not to be understood either by commentators or translators. It seldom signifies what in English we call impious; and it has a peculiar beauty here, arising from the pietas, or duties performed by parents for their children whom they survived. This survivency was considered, by them, as against the course of nature, (see my translation of Cato Major, p. 276, note q), and it was accordingly so expressed in the inscriptions upon the tombs erected by parents for their children, many of which are still extant.

to

to accuse the gods for suffering me to live, after depriving me of all that was near and dear to my soul? Can I think that providence watches over mortals? Witness, my misery, it does not. And yet, in what am I to blame, but that I yet live? Witness, far more, the untimely fate of those innocents, snatched out of the world by the cruel hand of death. Their mother I had lost before she had completed the nineteenth year of her life, after making me the father of two sons. Happy she was, even in the bitterness of death, that she did not live to see them laid in the grave! So wretched was I rendered by this single stroke, that it was out of the power of fortune to restore my happiness. Blest, as she was, in the exercise of every virtue that adorns woman, how inconsolable must her husband be! Nay, when I compare her tender age with mine, I think I am mourning a child,* as well as a wife. But still the dear pledges she left behind her gave me comfort; as did the reflection, that, unkind† and unnatural as it was in her to leave me alive, she had her wish, in escaping, by untimely death, every pang that can distress nature. While plunged in affliction for her, the loss of my younger son, who was but in the fifth year of his age, took from me half of all that could make me wish for life.

I love to brood over my woes; I hate an ostentatious misery; I chuse not to exaggerate my misfortunes: would to heaven I could soften them!

* Mourning a child.] Orig. Potest & ipsa numerari inter vulnera orbitatis. It is surprising that a writer, who understood our author so well as the Abbé Gedoyn must be allowed to have done, should have let slip the sense of this passage. The word orbitas occurs before in this introduction, and is plainly applied to the loss of his children.

† The original here is extremely perplexed, and may be understood in different senses. I have chosen that which I thought most natural.

but

but can I with patience reflect upon his look, how sweet! his language, how endearing! his wit, how sparkling! his disposition how gentle! and his understanding (who can believe it) how, even sublime! had he not been my own son, yet how tenderly must I have loved him! Nay, fortune seemed to smile me into excess of anguish, by his being more fond of me than all the world besides; fonder than of his nurse, who suckled him; fonder than of his grandmother, who brought him up; and fonder than he was of all who succeed best in giving dalliance to that tender time of life. Well, then, may I congratulate myself upon the pains I felt a few months before, for the loss of his excellent, his matchless, mother; because my lot was not so deplorable as her's was happy, by her not living to taste of such misery.

The pride of my wish, the joy of my life, my young Quinctilian, still remained alive, to make amends for all the afflictions I had suffered. He was not, like my other boy, only in the blossom of his age; no, his amiable qualities, like well-set fruit, drew towards maturity, for he was now in his tenth year. By all my woes, by the torture of my soul, by those dear shades which my grief now idolizes, I swear, that I have discovered in him such acquirements of learning, such fondness for study, such excellency of genius (I appeal to his teachers), as in the course of my long experience, I never knew excelled. But what am I saying? He possessed every virtue of candor, affection, tenderness, and generosity, to such a degree, that the severity of the stroke, by which heaven destroyed my happiness, seems to establish the truth of that general observation, that early maturity is most liable to early death; and that a certain malignity is attached to the tenure of our beings, and, jealous of sublu-

nary bliss, blasts our fondest hopes; lest mortals should exceed the bounds prescribed to mortal happiness.

Even every accidental advantage centered in my boy: his voice was strong and distinct, his aspect lovely; and he spoke the two languages of Greece and Rome with as much propriety as if he had been a native of the one as well as of the other.

All these were only promising appearances, but he possessed real virtues. He had resolution, sedateness, and a courage that was proof against pain and fear. With what spirit, even to the astonishment of his physicians, did he bear up against the pains of his disease; how he even endeavoured to comfort me amidst his dying agonies! and how, during all his fits and ravings, there still was a meaning in his words, that discovered the love of learning to be uppermost in his mind!

My blasted hopes! do I live to say, I saw thy eyes swimming in death, and the throws of thy departing life? That I embraced thy cold, thy lifeless, corse, and felt thy dying grasp? Can I live to say this, without deserving all the tortures I feel, without deserving all the agonies I suffer? Hadst thou left me, my son, a childless father, reserved only to wretchedness? Thou, who wert so lately, by a consular adoption, entitled to succeed to all thy father's honours? Thou, whom a prætor, thy uncle, had already marked out for his son-in-law? Thou, who promisedst to restore eloquence to all her native beauties? Well, amply art thou revenged by the miseries of a life, which, far from desiring, I must only endure. If living be my crime, it shall likewise be my punishment. It is my own choice; for it is idle in men to impute all their miseries to fortune. It is a man's own fault, if he lives long in torments. I am alive, it is true; and in living I

have a purpose that justifies me. For it is not in vain that wise men have observed, that learning alone brings relief to misery. Should the waves of my present affliction subside; should my sorrows admit of other ideas, than those that possess me now; I then shall crave pardon from the public, for so long delaying this work. For, surely, no one will be surprised that a work should be delayed, when it is surprising that it was not laid aside. But, if the following books should, in their careless composure, bear the marks of the affliction I suffer, let it not be imputed to my negligence, but to my sorrows; which, though they have not extinguished, have damped the vigour of my genius, which never was extraordinary. But let me now make head against them with the greater resolution, because it is as easy to despise them for the future, as it is difficult to support them for the present. Fortune has done her worst against me; and, amidst all my calamities, I find this a firm, though an unhappy, security.

Meanwhile I am in hopes the public will take my labours in good part, because they have been continued for no private or particular purpose of my own. All the pains I have taken have been for the sake of strangers. All my writings, if they contain aught that is instructive, must now instruct strangers; and (wretch that I am!) the fruits of my brain, as well as the acquisitions of my fortune, must go to those who are aliens to my blood.

CHAP.

CHAP. I.

CONCERNING THE PERORATION, OR WINDING-UP OF A PLEADING.

NEXT follows the peroration which crowns, or, as some will have it, concludes, the whole. It operates in two manners; upon things, and upon affections.

The first manner contains a repetition and accumulation of the several circumstances that relate to the pleading, and refreshes the memory of the judge, by placing the whole of the cause full in his view; while, at the same time, those circumstances that, singly, were weak, become strong when urged in a body. This is to be performed in as concise a manner as possible; and, as the Greek word* for it implies, we are to proceed through the several heads of the pleading. If it is tedious, it then becomes, not a recapitulation, but, as it were, a new pleading. As to the recapitulation itself, it ought to be performed in a weighty, affecting manner, marked with proper sentiments, and diversified with figures; for nothing is more hateful than a plain, downright repetition, as if the speaker had a distrust of the memory of the judges. Now, there are a thousand ways to keep a recapitulation from flagging in this manner. Cicero gives several excellent examples of this, particularly in his pleading against Verres, when he says, "were your own father to be your judge, how would he act, were he to hear the following charges against you fully proved?" And then he begins his recapitulation. In another place likewise, he proceeds in

* Ἀνακεφαλαίωσις.

his

his recapitulation, by invoking all the gods whose temples had been plundered by that prætor.

A pleader sometimes is to fall into a recollection, or a kind of a doubt, whether he has not omitted somewhat, and in what manner he is to answer his adversary upon such and such heads; he is likewise to figure to himself in what manner the prosecutor will behave, when he finds his charge so thoroughly confuted. Sometimes the happiest manner, however, arises from the pleading of an adversary himself; as to that part of the charge, he prudently omitted it:" or, "He chose to undergo all the hatred:" or, "He had recourse to entreaties, when arguments failed him," and the like. But I have no design to attempt to point out the several different manners, lest the reader should think they are the only ones that can be employed upon this occasion. So far from that, they occur in a thousand shapes from the nature of causes, from the pleading of opponents, and from accidental circumstances.

It is not sufficient that we urge home our own opinion; we may call upon our adversary, we may defy him to give us an answer. But we are to take care to do this only, where the nature of a pleading admits of it; that is, when we are sure we cannot be refuted in what we have advanced. For should I challenge an adversary upon a point he can make good against me, then I act the part not of an opponent but a prompter.

Recapitulation is, in fact, the only kind of peroration that most of the Athenians, and almost all the philosophers who have wrote upon the art of rhetoric made use of. The reason why the Athenians admitted of no other was, because an officer was appointed in their courts of justice, whose duty was to caution every orator against attempting to move the passions. It is no wonder if the philosophers were

were still more averse to that practice, as they looked upon all emotions of the passions to be weaknesses, and that it was dishonest to divert the judge from truth by such means, and that no good man would avail himself of a blameable practice. Notwithstanding this, if truth and justice cannot otherwise be come at, if the public cannot otherwise be served, to move the passions is both justifiable and necessary.

It is agreed upon, that a recapitulation may be very proper in several parts of a pleading, as well as in its end, if the cause is complicated, and rests upon great variety of evidence. At the same time it is certain, that many causes are so short and simple as not to admit of a recapitulation in any part of their pleading. Recapitulations, however, are made use of in the same manner by the defendant as by the accuser.

They generally, likewise, make use of the same means for moving the passions; the one more seldom, the other more often and more strongly. For the business of the prosecutor is to exasperate the judges; that of the defendant to soften them. Sometimes, however, a prosecutor may bewail and compassionate the misfortunes and misery of the party he is obliged to prosecute; and the defendant may inveigh with bitterness and indignation against the wicked conspiracy that has brought him into danger. It is therefore proper to make a distinction between those two manners, which in the peroration are almost the same as in the introduction, only more free, strong, and spirited. For in the introduction we only modestly bespeak the favour of the judges; it is enough if we get a footing in their affections, because the whole pleading remains to make it firm. But in the peroration we are to leave the judge with the dispositions we wish him to have; we have nothing

thing more to say, we have no farther opportunity to convince him. It is therefore the business of each party to conciliate the judge to himself, and to render him adverse to his adversary; to excite his passions, and to allay them. There is likewise a very short rule which I think may be of use to both parties. Let an orator review the whole strength of his cause; then let him suppose himself upon the bench, and let him consult his own breast, how he is to be moved, and let him accordingly urge whatever can move himself upon the invidious, the favourable, the odious, or the compassionate side of the question, whether arising from its real, or its seeming merits. But to come to particulars, for that is the surest way.

In laying down rules for the introduction, I have shown how an accuser may conciliate the favour of his judge. Some things, however, only touched upon there, require to be more fully discussed in the peroration, especially if the prosecution lies against a man who has abused his power, who was hated by the public, and dangerous in society; a man whose condemnation will do honour to his judge, and his acquittal discredit. Calvus, in his pleading against Vatinius, gives us a fine touch of this kind. "You know, my lords, said he, that Vatinius is guilty, and all the world knows you know it." In like manner, Cicero, in his oration against Verres, says, "That the condemnation of Verres will retrieve the credit of the courts of justice." This too is a touch of the same kind. Sometimes an orator, as was the case of Cicero, may have occasion to alarm a court with fears and terrors; and these come most properly, and with the greatest effect, into the peroration. I have, in another book, expressed my sentiments upon this matter.

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An orator, likewise, is more at liberty in the peroration, than in any other part of his pleading, to rouse the passions of envy, hatred, resentment, or anger, within the breast of the judges. Does a defendant seem secure they envy him for his power: arrogant, they hate him for his brutality: presumptuous, they detest him for his insolence: not only his actions and his sayings, but even his looks, his dress, and his behaviour, have their effects in a court of justice. It was a smart reprimand which the impeacher of Cossutianus Capito gave, when I was a young man. He spoke in Greek, but it was to this purpose; You are ashamed to show respect for Cæsar. Meanwhile, the great business of an accuser, in urging his charge, is to do it in such a manner as that it may appear as atrocious, or if the cause so requires, as compassionate as possible.

The atrociousness of a fact arises from the following considerations. What is the fact, by whom, against whom, with what intention, at what time, at what place, and in what manner was it committed? All which are considerations that require a thousand arts and turns in a pleader. Suppose we complain of an assault. The first thing we do is to explain the matter of fact; we are then to enquire whether the party was an old man, or a boy, a man in public authority, a man of probity, or a man who had deserved excellently well of his country. We are then to consider, whether the assault was not committed by some mean, pitiful fellow; or, on the contrary, by some overgrown great man, swelled with the insolence of power; or by one who was under obligations to the prosecutor. We are likewise to consider, whether the assault was not committed upon some solemn festival; whether it was not aggravated by the courts of justice being then trying

a fact

a fact of the very same nature; or in a time of public danger. An aggravation likewise lies, if it was done in a theatre, or in a temple, or in an assembly of the people; or if it was done neither by mistake, nor from a sudden start of passion, but from resentment founded upon wicked motives, because perhaps the injured party had appeared in defence of his father, or been bound for his friend, or had been engaged against the candidate in a competition for public honours; or if the defendant discovered such dispositions as to show that he would willingly have done more mischief, had it been in his power. The atrocity of an assault is likewise greatly heightened by the bitter, affrontive manner in which it is inflicted. Thus Demosthenes, in his pleading against Midias for giving him a blow, enforces his charge from the circumstances of the revengeful look, and the insolent manner of the defendant. Under this head likewise may be ranked pleadings upon murder, whether committed by a sword, by fire, by poison, by one or more wounds; whether the death of the party was quick, and whether he did not languish his life out in torments.

It frequently happens in a prosecutor's way to endeavour to raise compassion; for instance, by bewailing the misfortunes of the party, whose fate he is avenging; or the destitute condition of a helpless parent, or orphan children, who are left behind. The representation of future events make likewise deep impressions upon the minds of the judges; when a pleader, for instance, points out the dreadful consequences that must attend the impunity of a charge of murder or oppression; how their country must be abandoned, how all property must be confounded, and how every man must be obliged to submit to what the hand of violence shall please to inflict.

But it is generally the business of a prosecutor to guard against the impressions of pity, which the defendant will attempt to give to the judge, and to encourage him to decide with boldness. Under this head comes the practice of seizing, by way of prevention, upon every motive and every argument which you think your adversary will employ against you. For this manner puts the judges more upon their guard to do their duty, and takes from the defendant the recommendation of novelty, because, having been already advanced by the prosecutor, they seem stale. Thus, Servius Sulpitius, in his pleading against Aufidia, previously answers all objections that could be made with regard to the danger of the parties who had signed the instrument. In like manner Æschines premonishes the judges, as to the nature of the defence which he knew Demosthenes would make. Judges likewise are sometimes to be instructed what answer they ought to give to those who petition them; and that forms a kind of recapitulation.

As to the party tried at the bar, his advocate may take occasion to recommend him for the great offices he has borne, for his generous pursuits, the wounds he received in his country's service, his great quality, and the merits of his ancestors. This was practised even to emulation by Cicero and Asinius; the former in pleading for the elder, and the latter in his pleading for the younger, Scaurus. A man has likewise title to favour, if the motive for the prosecution against him be some virtuous action he has done, especially if it proceeds from the goodness of his heart, his humanity, or compassion; for he has then a kind of a right to require from the judge the same sentiments which he showed towards others. Under the same head we may rank all appeals made to a court on account of public utility,

utility, the glory of the example, and regard for posterity.

Compassion, however, is the great engine to be employed for a defendant, for it somtimes not only forces its way into the breast of a judge, but obliges him by tears to confess the sentiments of his soul. The motives of it chiefly are the sufferings which the defendant has undergone, or is now undergoing, or must undergo if he is condemned.; and all these are aggravated by mentioning from what a happy fortune, into what an abyss of misery he is fallen. All this receives great weight by the consideration of the party's age, sex, and pledges of affection, by which I mean his children, parents, and kinsmen; and these are handled after various manners. Sometimes the advocate himself assumes this character. Says Cicero in his pleading for Milo; "Wretch, unhappy wretch that I am! could you, Milo, by these recall me to my country? And by these shall I be unable to retain you in your's." This has the greater effect, if, as happened in the case of Milo, the defendant is of too high quality to become a suppliant. Every man must feel indignation, to see a Milo begging for his life, after acknowledging that he had killed a man of the highest distinction, because he thought it his duty so to do. His advocate therefore made even his excellencies a motive for the favour of the court, and took upon himself the part of suppliant.

Upon those occasions particularly the prosopopœia is of great service, by which I mean, speeches supposed to proceed from another, but uttered by the principal party, or his advocate. Inanimate things have an effect, either when an advocate addresses himself to them, or when he makes them speak. The affections are likewise moved by the characters we assume; for the judge does not then consider us

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as bewailing the miseries of another: no; it is the very sense, the real complainings of the wretches themselves that pierce his ears. And as they would have the greater impression, did they actually proceed from the principals in misery, so they receive a great accession of strength from the pleaders assuming their character, by speaking as it were by their lips. Thus in theatrical exhibitions, an actor * makes a greater impression, when his voice and pronunciation is suited to the mask he wears. Therefore Cicero, though he is so far from making Milo a suppliant, that he extols him for his spirit and intrepidity, yet he puts into his mouth expressions and sentiments, which, though plaintive, are consistent with the character of a brave man: "What abortive toils, he cries, have I undergone! What deceitful hopes have I harboured! What vain speculations have I entertained!"

We ought not however to dwell too long upon this plaintive strain. For it has been said with great truth, that nothing is more apt to dry up sooner than our tears. Now if time can asswage even real sorrows, it necessarily follows, that the impressions

* Actor.] Abbé Gedoyn seems to have mistaken the meaning of this passage, which in the original is, Ut scenicis actoribus eadem vox, eadem pronunciatio, plus ad movendos affectus sub persona valet. His translation is, C'est ainsi qu'au théâtre l'action est plus intéressante sous le masque qui représente les personnes que l'on met sur la scéne. This makes our author contradict his great master Cicero, who thought that masks spoiled, because they covered the expression of the countenance. See de Oratore, l. 3. c. 59. For my own part, however the admirers of antiquity may be fond of the custom of acting in masks, I cannot help thinking it to have been a mighty childish foolish custom. The truth is, it seems to have begun in Rome, in Cicero's time. For in that very fine chapter of his which I have quoted, he tells us there were old men then alive, who never could be brought to applaud the action, even of a Roscius, when it was under a mask.

made

made by the mere force of eloquence must quickly vanish; and if the speaker insists too long upon distressful circumstances, the hearer beginning to be tired of weeping, resumes his tranquillity, and no longer sensible of the violence that has been done to his passions, he returns to reason. Let us not therefore suffer this manner to cool, but when we have wound up the passions to the full, let us leave them to their effect; always remembering that no man can, for any considerable length of time, mourn for the miseries of another. Upon the whole, as I recommend on all occasions, so upon this especially, the style ought to rise, because if a speaker does not improve upon what he said before, he seems to lessen it, and when a passion begins to subside, it soon ceases.

But an orator can draw tears from his hearers, not only from what he speaks, but from what he does, and by what he shows. Hence it was that the custom obtained of producing to the public view the persons of the defendants, all squalid, and shocking in their appearance, together with their children and parents; and for the accusers to produce the bloody sword, the gashed body, and the blood-stained cloaths, to tear open wounds, and to show their bodies seamed with scars. These objects make a prodigious impression, by representing to the beholder the thing immediately transacting before his eye. It was thus the Roman people grew ungovernably outrageous upon seeing the bloody robe of Julius Cæsar exposed in the forum. This instructed them that he had been murdered, and then was his body produced upon a bed of state; but still that robe drenched in his blood gave them so lively a conception of the villainy that had been transacted, that they rather seemed to think, that

Cæsar

Cæsar was slaying before their eyes than that he was already slain.

I have indeed heard of (and have myself seen it practised) a very childish device, that of exhibiting above the image of Jupiter,* the picture of the whole transaction, to strike the greater horror into the court. For what a pitiful speaker must an advocate be, who shall trust more to the effects of a bit of painting than to the powers of eloquence!

Meanwhile, I am sensible, that a mean, careless, dirty dress, worn by an accused party, and all his friends, have had wonderful effects in his favour, and that entreaties have been of the utmost consequence in saving an accused party from condemnation. It may therefore be of service to conjure the judges by all the dearest pledges, such as the children, the wife, and the relations of the defendant; and the invocation of the gods gives his defence an air of proceeding from a good conscience. An accused party may even go so far as to prostrate himself before his judge, and to embrace his knees, unless his character, his dignity, and the nature of the cause, puts him above such meannesses. For, in some cases, a man ought to act with as much spirit in defending as in committing what he is charged with. But still he ought to preserve such deference for authority, as not to betray an insolent security.

We have a memorable and a most powerful instance of this manner, in the defence which Cicero made for Lucius Murena, against the charge brought against him by the greatest men in Rome. For he persuaded the court, that nothing could be of greater service to the republic than that the consuls should enter upon their offices before the first of January.

* Jupiter.] His statue was placed in courts of justice.

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But this is a circumstance that has no place in our time. For the public safety cannot now be affected by the event of any trial, because all is governed and protected by our sovereign.

Hitherto I have been speaking of prosecutors and defendants, in criminal cases, because, in such cases, chiefly, the movement of the passions takes place. But private causes admit likewise both kinds of perorations. I mean that of recapitulating particulars, and the affecting manner I have been just mentioning; if a party's fortune or character is at stake. For to think of raising those great movements in trifling matters, is as ridiculous as to attempt to clap upon a little child the mask and the buskins in which the character of Hercules is played.

It is likewise proper to observe that, in my opinion at least, the success of a peroration depends greatly upon the manner in which the defendant accommodates his behaviour to the sentiments which his advocate attempts to raise. For stupidity, clownishness, stiffness, and ungracefulness in a party, throw a great damp upon a pleading, and the pleader himself ought to be at great pains to prevent every thing of that kind. I have myself often seen principals behaving in a manner quite the reverse of what their advocate was saying, without a single muscle of their face being altered; nay, laughing, out of all character, and acting and looking so as to make others laugh, especially when any thing happened to attract the eyes of the audience. I remember an advocate (who was concerned in a cause in which a girl pretended to be the opposite party's sister) slipt the girl over to the bench where her alleged brother was sitting, that she might cling to his bosom just as he was finishing his pleading; but the brother, being apprized of it, had retired. This disappointment struck the advocate, though an eloquent

quent man, quite dumb, and he looked very silly when he brought the girl back to the bench where she sat before.

Another thought he was doing mighty matters when he produced, in favour of a lady who was put upon her defence, a waxen image of her dead husband; but, in fact, it did nothing but raise laughter in the court. For they who had the management of it, not knowing what an epilogue or a peroration was, held it up in view of the court as often as the advocate looked that way; till considering it more nearly, it was found to resemble an ugly wrinkled old man. This foolish circumstance turned his whole pleading into ridicule.

Every body knows what happened to Glycon. He had brought a boy into court, that he might excite compassion by crying; but when Glycon asked him "Why he cried?" "My schoolmaster's pinching my ears," replied the boy; for that it seems was the real case. But nothing more effectually instructs us in the danger of managing epilogues than the ridicule which Cicero throws out against the Cepasii, in his pleading for Cluentius.

A pleader, however, may get the better of all such disadvantages, if he has presence of mind to vary his manner. But they who must stick by their notes and written instructions, when such incidents happen, are either quite struck dumb, or say something that is palpably false; such as, See how the wretched man stretches forth to you his imploring hands! Or, See how the children cling about their unhappy father! Or, behold he calls, he beckons me back! when at the same time not one of those circumstances happens. Now we bring these blunders from the schools, where we are at liberty, without any danger of not succeeding, to feign whatever we please, and all passes for reality. But this is not

the case with real actions at the bar. It was a smart reply which Cassius made to a raw pleader, who called out to him, Why, O Cassius, dost thou behold me with that sternness of look? I did not, replies Cassius, upon my honour; but I suppose you have written so in your notes. I will not disappoint you, however. With which he surveyed him with as grim a look as he could put on.

Above all things we are to remember, that no man ought to attempt to draw tears from an audience, if he cannot command the utmost powers of eloquence. For as the effect which this produces is, of all others, the most irresistible, so, if no effect follows, it is quite palling and insipid; and an indifferent orator would do much better to leave the judges to the impressions which the cause itself makes upon their minds. For all the strainings of look and of voice, and all the assumed airs of sorrow in the defendant, generally seem ridiculous when they fail to move. A pleader, therefore, ought most carefully to measure and to calculate his powers, and to be thoroughly sensible what a difficult task he is to undertake; for it knows no medium, because whoever attempts it, must either draw tears or laughter from the audience.*

The

* Audience.] An English reader, of any taste or judgment, cannot greatly admire the conduct of the Roman pleadings, as it is represented, not only by our author but by Cicero, in whose days, however, it was much more modest than it was in Quinctilian's, whose professed design of writing was to restore true eloquence from the degeneracy into which it had fallen. The theatrical manner, which our author very justly blames in this chapter, must have been extremely shocking, when it appeared to have been, what we call re-hearsed beforehand, between the advocate and his principals. We are, however, to observe, that it is only the injudicious practice of it that our author condemns, and the behaviour of a defendant is doubtless now, as well as then, of great importance to his safety. The magnanimity of Charles I. before the high court of justice, though it did not save him, did his family great service,

The business, however, of a peroration is, not only to excite, but to dispel, compassion. This may be effected in a set speech, which cools the judges, after being warmed into pity, and likewise by certain arch, well-applied sayings, such as, give the boy some bread and butter there to keep him from crying. Or, as when an advocate carried a boy into court, the advocate on the other side, turning round to his client, who was a very fat man, how am I to do, says he, I cannot hold you up in my arms?

This manner, however, ought not to descend into buffoonry. Therefore I cannot recommend the conduct of one of the greatest orators of his time, who, when several boys appeared in court, whilst his antagonist was finishing his pleading, tossed amongst them a handful of marbles, for which they immediately fell a scrambling. Now this very insensibility of their danger has in it somewhat that is very affecting. Nor can I approve of the behaviour of a defendant, who, when his prosecutor brought into court a bloody sword, with which he alleged he had murdered a man, he immediately jumped from the bar, as if he had been frightened, and, hiding his face with all the signs of consternation, peeping out of the crowd, he asked, whether the man with the bloody sword was gone? It is true he raised a laugh, but it was at his own expence. The effects of such incidents, however, are to be removed and guarded against in our reply. With what weight does Cicero

service, and one of his principal followers saved himself from the scaffold by a well-timed bow, which he returned to his judges upon their condemning him. But there is scarcely in all history an instance that matches that of John Lilburn. These and many other cases, however that may be brought from English history, are mentioned here, only by way of contrast to the Roman manner. Meanwhile, the exquisite judgment of our author is admirable, and every Englishman who designs to speak in public must receive infinite benefit from this part of his work.

plead against the appearance of the picture of Saturnius, in his pleading for Rabirius! And with what humour, in his oration for Varenus, does he ridicule the young man, who was brought into court, and his wounds untied every now and then!

An epilogue may be conceived in a mild, soothing, strain, calculated for pleasing an opponent, if his character is such as claims our reverence, or if we give him a word of friendly advice, and invite him to a reconciliation. This manner was finely handled by Passienus, when in a pecuniary matter he was concerned for his wife Domitia against her brother Ænobarbus. For, after enlarging a good deal upon their consanguinity, being both of them very rich, he touched upon their wealth, adding, believe me, there is nothing each of you less wants than the thing about which both of you are now contending.

It is true, the movement of the affections is chiefly attempted in the introduction and close of a pleading; yet other parts of it admit them, though more sparingly, because the great powers of speaking ought to be reserved for the close. There, if ever, we are to unlock every spring, and open every source of eloquence. There it is, if we have succeeded in the other parts of our pleading, that we are to seize the affections of the judges. We have now weathered all its shelves and shallows; we are now to spread all the sail we can; and, as the great design of a peroration is to heighten, we are there to display the utmost magnificence of expression and sentiment; we are to shake the souls of the audience the more powerfully, the more near we draw to the plaudite, that I may speak the language of the antient drama. In other parts we are to touch the affections as the occasion offers; nor indeed, without touching them, ought we ever to explain

any

any thing that admits of terror or compassion. When the question turns upon the quality of an action, we may very properly throw in some sentimental stroke at the end of every proof we bring. And when the cause we plead is complicated, we employ as many epilogues as it consists of parts, as Cicero does in his pleadings against Verres: for he draws tears from the audience on account of Philodamus, the ship-masters, the infamous deaths of Roman citizens, and a great number of other circumstances.

Some think that such epilogues are only parts of epilogues, into which the peroration is divided. But I do not think them parts, so much as different manners, of a peroration. For the very words, epilogue and peroration, imply both the one and the other to be the finishing* of a speech.

CHAP. II.

CONCERNING THE AFFECTIONS; AND IN WHAT MANNER THE PASSIONS ARE TO BE MOVED.

THOUGH the part I have now discussed is the most important of any in judiciary pleadings, as it is chiefly sentimental; and though I have been necessarily led to speak somewhat concerning the affections, yet I could not comprehend the whole of that subject at one view; nor, indeed, was it proper. I am, therefore, now to attempt to treat of the most difficult part; I mean that which operates most strongly in bringing a judge to be of our opinion, by moving his passions, and by forming, and, as it were, moulding him into those dispositions, which we wish he should entertain. I have already touched upon this subject, but in such a manner as shews what is pro-

* Finishing.] This is expressly against the authority of Cicero. (See the translation of the Orations, Vol. III, p. 350.)

per to be done, rather than the manner in which it is to be effected. But now I am to investigate the matter more deeply.

I have already observed, that there may be room, through the whole of a pleading, for touching the passions; and, so far is the nature of them from being so easy as to require but to be slightly touched upon, that there is nothing more powerful in all the practice of eloquence. For, with regard to all the other parts of a pleading, a man of a slender and narrow capacity, if aided by instruction and experience, may manage them, nay, may employ them to good purpose. Nothing is more certain than that there are now, and have always been, many pleaders who have been sagacious enough in finding out all that can be of service to their arguments and proofs. I am far from contemning such abilities, though I look upon them to be only serviceable in more fully instructing a judge; and (I speak for myself) they are very proper patterns for the imitation of those, who want to pass only for well-spoken pleaders at the bar. But seldom has that orator appeared, whose stream of eloquence could carry a judge out of his depth, who could throw him into what disposition of mind he pleased, fire him into resentment, or soften him into tears. These, these, are the qualities that give an orator his powers, and eloquence her empire, over the human passions.

As to arguments, they generally arise from the nature of the cause itself, and the best cause always furnishes the most: so that the man who gets the better by them, just knows that his advocate has not failed in his duty. But it is a province peculiar to the orator alone, to carry the judgment of he court by assault, and, by eloquence, to charm a judge from the perception of truths that may hurt our interest. This cannot be put into instructions;

it

it forms no part of a lawyer's brief.* Proofs have the effect of making the judges think well of our cause, but this art makes them wish well to it. Now, mankind naturally believe what they wish for; for when they begin to be touched with resentment, with favour, with hatred, or compassion, they then begin to imagine the case their own; and, like lovers who are incapable to judge of beauty, because their eyes are blinded by passion, a judge, whose affections are once touched, quits all pursuit after truth, he is warped by the tide of eloquence, and impelled by his torrent.

The sentence alone shews the effect which arguments and evidences have had upon the mind of a judge, unless his passions are touched by the orator; but if they are, he discovers his sentiment before he quits his tribunal, nay before he rises from his seat. Does not the gushing tear, which is the great purpose in all perorations, proclaim the sentence he is to give. This, therefore, is the business which the orator is to ply; here he must labour, here he must shine. Without it, all appears naked and hungry, languid and loathsome. So true it is, that the spirit and the soul of eloquence consists in moving the passions.

Now the ancients, we are told, divided these into two kinds† affections or passions, and what the

* Orig. Hoc non docet litigator; hoc libell is non continetur.] I am not very fond of modernizing the Roman customs, but there is no avoiding it on this occasion.

† The original, which I did not think proper to translate, s al - teram Græci πάθος vocant, quam nos rectè vertentes ac propriè affectum dicimus: alteram ἦθος cujus nomine, ut ego quidem sentio caret sermo Romanus, mores appellantur; atque inde pars quoque, illa philosophiæ ἠθικὴ morulis est dicta. Sed ipsam rei naturam spectanti mihi, non tam mores significari videntur, quàm morum quædam proprietasi. As Quinctilian here acknowledges that the Latin language had no word for ἦθος but that it signifies a propriety of manners, I hope the reader will think that manners in English, is the only word that answers that definition.

Greeks

Greeks term manners; but I take it to be a propriety of manners, and it comprehends all the habits of the mind. Some have been so circumspect as to express the meaning, without explaining the word. Hence they call the former the violent and warm, the latter the mild and gentle, affections. The former give us emotion, the latter composure; the one overpowers, the other persuades us; the one hurries us into disorder, the other attracts us into benevolence. Some say that the passions are momentary, which I own in general to be true; and yet, I think, there are certain subjects that require a pathetic strain through the whole. Meanwhile, the manners, or milder affections, require as much art, though not so much power and animation; because they enter into most, and in some sense into all, causes. For the orator can speak to no subject without touching upon virtue and utility; upon what is our duty, and what ought to be our aversion.

Some think all commendations and excuses belong to the manners. I own they do partly, but not wholly; nay, that the passions and the manners of a man are sometimes the same, only in a stronger and a weaker degree. Thus, love is the result of the affections; kindness of the manners. Sometimes, as in the close of a pleading, their operations are different; for we animate by the passions, and mitigate by the manners.

Let us, however, more distinctly explain this term of manners, because it is not sufficiently intelligible of itself. I understand, then, and I believe it to be so understood by the professors and practisers at the bar, that it is distinguished by goodness, not only of the mild and gentle, but of the cheerful, benevolent, kind; such as pleases and charms the attention. And the great property of its expression consists in its seeming so entirely to flow from the nature of men and things,

things, that the manners of an orator shine through, and are characterised by his discourse.

This manner runs through the nearest relations in life; for there, when we suffer, when we forgive, when we apologise, when we exhort, all is done without passion, and without hatred. In such circumstances, however, there is one character of behaviour of a father towards his son, of a guardian towards his ward, and of a husband towards a wife; for there each loves the object that gives him pain, and it is on account of that love that he reprimands it. But the reproaches of an old man towards an insolent young fellow, or of a man of quality to an upstart, are of a very different character. The former speak from concern, the others in bitterness.

But there are characters of behaviour of the same nature, but of less importance; such are asking forgiveness, or apologising for the heat or gallantries of youth. Under this head also comes the arch banter upon another's infirmities; but that does not come under this head only, for it is nearly allied to the properties of dissembling, soothing, fawning, and irony, by which we say one thing and mean another.

To the same head we may refer a behaviour which operates still more strongly, in procuring hatred; I mean that of an orator seeming to submit to his opponent, so as to convey a secret reproach for his insolence. For our yielding the superiority exposes their pride and insolence; and such orators as fond of hard names and bitter terms, give a loose to their tongues, little know how much more cutting raillery is than reproach. An adversary's arrogance must hurt him; but our scolding may hurt ourselves.

There is a character that we are to observe with regard to our friends and relations, in all our endearments and concerns with them, which partakes of the chief principles I have laid down; it being

both

stronger than the one, and weaker than the other. In schools, likewise, when we draw the character of the rustic, the superstitious, the covetous, and the cowardly, according to their respective pursuits, we are very properly said to paint their manners, because each has a separate manner which we imitate, and which is the subject of our composition.

The performer of all this, however, must be at once a man virtuous and polite; for if by those qualities, where they are found, a pleader can recommend his client to the favour of a court, much more ought he, either really or seemingly, to possess them. Those causes appear to great advantage, in which we are prepossessed with a good opinion of the pleader's personal character. For when a prejudice lies against a speaker, he must speak under great disadvantages. Because, if we think he speaks according to truth and justice, we then shall have an opinion of his manners; and if we have none, we must disregard * what he says. Now, manners require here a character † of speaking that is open and gentle, without any swelling, nay, without any elevation or sublimity; it is enough if all we speak is delivered in proper, pleasing, polite, and probable expressions. Such are the qualities that ought to enter into this middling character of speaking.

Very different from that is the passionate or pathetic character, which is appropriated to the strong affections, and which, to mark it as nearly as I can,

* Disregard.] The reader, who is acquainted with the original of this chapter, will not be surprised at my being obliged now and then to throw in a word that is not in the original. The Abbé Gedoyn, though he takes much greater liberties of that than I do, has in this chapter several times mistaken, or obscured, our author's sense.

† Meaning the middling way between the two great principles he has laid down.

resembles tragedy, as the other manner does comedy. The pathetic is almost entirely employed upon resentment, hatred, fear, aversion, compassion, and the like, the sources of which are well known, and I have pointed them out, when I treated upon the introduction and peroration.

Now, we are to understand that fear is of two kinds; that which we suffer, and that which we create. And so is hatred; for we hate, and excite hate. We may say the same of envy. But the latter is the most difficult task for an orator, because it rises from the thing, whereas the other is inherent to the person. Now some men are in their persons detestable through their crimes, such as parricide, murder, poisoning. But some are to be painted so as to appear detestable.

Afflictions likewise are aggravated by showing our own afflictions to be greater than those of others, however aggravated. Thus Virgil makes Andromache say,

Thee, princess, thee, heav'n all its favours gave,
When in Troy's ruins you obtain'd a grave;
Tho' thy last looks beheld her wretched state,
And on a Grecian's tomb you met your fate.

Now, how wretched must Andromache have been, if, compared to her, Polyxena was happy! Sometimes we may exaggerate an injury done us, to such a degree, that, compared with it, less injuries may appear intolerable. "Had you struck me the crime had been indefensible. But you have wounded me." I shall, however, speak more circumstantially to this point, when I come to treat of amplification.

Meantime, I am to observe that the pathetic manner not only represents things as they really are, cruel and distressful, but exaggerates, into the utmost indignity, matters that of themselves appear of no great

great consequence. For instance, when the orator labours to prove, that a slander is worse than a blow, and that taking away a man's good name is worse than taking away his life. For the powers of eloquence have the property, not only to force a judge into the sentiments that the nature of a thing presents to his mind, but to persuade him either from inducements that are not in the nature of the thing, or from reasons that are strongly heightened. This is effected by that style which inspirits a pleading by exaggerating every indignity, every hardship, every oppression; and in this style Demosthenes greatly excels all other orators.

Having thus omitted nothing of all that I have read or taught, which deserves notice, I might here take my leave of this subject; but I do not think it sufficient for my purpose barely to lay down rules that have been given by others. No; my purpose is to enlighten the darkest corners, to penetrate into the deepest recesses of this mysterious place, to which no hand shall conduct me, but that of experience and of nature. Now, according to these, the great secret of moving the passions consists in our being moved ourselves. For, sometimes ridiculously, always ineffectually, shall we represent sorrow, anger, and indignation, if what we feel within ourselves is not suited to the expressions of the tongue and the face. Whence is it, when the wounds of sorrow are green, that they give eloquence to the complaints of the mourner, and that passion sometimes supplies the rustic and the ignorant themselves with the highest strains of oratory; but because the parties possess the energy of nature, and their manners arise from sincerity* of disposition?

Let

* Sincerity.] Mr. Rollin is here a little severe upon our author, for pretending the observations in the fine passages here laid

Let us, therefore, when we want to persuade others of the truth of what we urge ourselves, be impressed with the real passion we endeavour to excite, and let us talk to the judge with the feeling of the very sentiments we want to inspire. If I myself am unconcerned, while I am endeavouring to give him pain, can he feel it? Can I fire him to resentment, if I, who am endeavouring to do it, appear without warmth, and without emotion? If my eyes shed no tears, can they bring tears from his? No;

laid down, to be new, and entirely his own; since both Cicero and Horace had recommended them before, and nothing is more common than the rule, Si vis me flere, dolendem est tibi. But this vanity, if it is one, may be defended by the practice of the greatest authors of antiquity, both in prose and verse. For my own part, I look upon it in a different light, and that the discovery, which it is pretended Quinctilian affects to make, is introduced only to recommend to his readers the importance of the observation: as if he had said, that it must have occurred to him from nature and experience, though no other writer had made it before; and therefore he had a right to consider it as his own. Besides, it may be said, that very possibly, our author was so earnest in this matter that he forgot whatever Cicero or Horace had said upon it before, or perhaps affected to forget it, that he might give the stronger instance of his being penetrated with the very quality he is recommending. Add to this, that had he mentioned either Cicero or Horace, especially the former, he could not so properly have introduced his observation in the beautiful manner he does; and which, as it were, makes it new. For though Cicero, when speaking of the same thing, shines as much, perhaps more than in any other part of his works, yet whoever reads the original of our author must be extremely glad that he considered this observation as being new, proceeding entirely from nature and his own experience.

But, after all, I really cannot find the propriety of the charge against our author upon this occasion; for he does not say that the observation is new; far from it; he says it is dictated both by nature and experience (which are in common to others, as well as to him), and Aristotle in his rhetoric, long before either Cicero or Horace, had enjoined the same precept. But indeed our author's meaning is sufficiently explained by his manner of laying it down, for which he is not beholden to any other writer, but to nature and his own experience.

that

that is impossible. Nothing is combustible but through fire; nothing can be wet but through moisture; nor can a thing communicate a colour which it has not itself. The first consideration, therefore, of an orator ought to be, that he look upon the matter he pleads to in the same light in which he wishes the judge to view it, and that he himself be affected, before he attempts to affect others.

But by what means are we to be affected? The emotions of the mind are not in our own power. Well, I will attempt to speak, even, to the matter. Every man is endued with what some term fancy, and others imagination; because, thereby the images of things are so imprinted in our minds, that we think we see them in reality, and that they actually appear before us. Now the man whose imagination is the strongest, is the man whose affections are the most powerfully moved. Such a man we call one of a lively imagination, because he has a strong impression of things, voices, actions, as really striking his senses, and every man may, if he pleases, possess this faculty in a greater or less degree.

When the mind, for instance, has nothing to do but to indulge chimerical notions, and waking dreams, our ideas grow so strong that we imagine ourselves to be on a journey, on a voyage, in a battle, haranguing the people, or disposing of riches that are not our's to dispose of; nay, we do not seem to do all this, but actually do it. As this is the case, ought we not to avail ourselves of those wanderings of the mind, so as to make them serviceable to the purposes of eloquence? If I am to enter my complaint against a murderer, am I not to print upon my imagination every probable circumstance that happened at the time the murder was committed? Is not the murderer to spring suddenly out of his ambush, while the deceased trembles, calls out, betakes

takes himself to entreaties, and at last to flight? But alas, he is overtaken, I see the blow given and the man falling; still am I haunted with his gushing blood, his dying ghastliness; still do I hear his groans, still do I see his convulsive agonies in death.

Next follows illustration, or the making a thing real. This is rather painting than speaking; for it affects us as much as if the real thing was presented to view. How beautifully does Virgil realize the description of the mother of Euryalus, when she heard of her son's death!

> Her feeble hands th'unfinished task resign,
> They drop the distaff.———

And again, speaking of Pallas:

> Upon his breast appears the ghastly wound.

In like manner, the horse, at his funeral,

> Stript of his trappings moves with mournful pace,
> and the big drops come trickling down his face.

How finely does the same poet paint a person dying far from his native country!

> ——Sweet Argos his last thoughts employ'd.

When we call for compassion, we ought to think that the circumstances, by which we want to move it, have happened to ourselves; we are to be firmly in the persuasion that we are the very persons who have suffered all the hardships, the indignities, and the miseries we complain of; we are to feel a real temporary affliction without suffering ourselves to think that we only appear for another; and we are to express ourselves as if the case was actually our own. I have often seen players so affected, as to leave the theater in tears, after they had thrown by the mask,

in

in which they had performed a character of distress. Now, if they, whose business it is only to repeat the writings of another, are so affected by amaginary distresses, how are we to behave, who ought to be impressed with all the sufferings of another, by thinking the very things we express?

But, it is proper, even in declamations at school, that young gentlemen should be affected in the same manner as in real causes; and the rather, because there we oftener speak in the character of principals than of advocates. We there act the part of the childless father, the ruined merchant, and the endangered traveller. And, to what purpose is it to attempt their characters, unless we can likewise assume their sentiments? For my own part, I never could represent those matters, for I always felt myself to be the very person; and in the characters I have gone through, which I hope I have done with some applause from the world, I have been often so affected as not only to burst into tears, but have been often seized with paleness, tremblings, and every symptom of real agony and distress.

CHAP. III

Of Laughter.—Difficulty of raising a Laugh.—Demosthenes.—Cicero.—Effects of a Laugh.---Manner of raising one.---The Sources of it.---Caution against unproperly attempting it.---Examples.

I AM now to treat of a manner quite the reverse of that I discussed in the last chapter; I mean the manner of dissipating melancholy impressions, of unbending the mind from too intense application of renewing its powers, and recruiting its strength after being surfeited and fatigued.

Now

Now, we may be sensible, from the examples of the two great fathers of Greek and Roman eloquence, how difficult a matter this is. For, it is generally thought that Demosthenes had no talents, and Cicero no bounds, in raising laughter. The truth is, Demosthenes was not at all averse from attempting it, as appears by the instances of that kind, which he left behind him; which, though very few, are far from being answerable to his other excellencies. Few, however, as they are, they show that he liked jocularity, but that he had not the art of hitting it off. But as to our countryman Cicero, he was thought to affect it too much; for it not only entered into his common discourse, but into his most solemn pleadings. For my own part, call it want of judgment, or prepossession in favour of the most eloquent of mankind, I think Cicero had a wonderful share of delicate wit. No man ever said so many good things as he did, in ordinary conversation, in debating, and in examining of witnesses; and he artfully throws into the mouths of others all his insipid jokes concerning Verres, and brings them as so many evidences of the notoriety of the charges against him; thereby intimating, that the more vulgar they were, it was the more probable they were the language of the public, and not invented to serve the purposes of the orator. I wish, however, that his freeman Tyro, or whoever he was, who collected the three books of his jokes, had been a little more sparing in publishing the good things he said; and that, in chusing them, he had been as judicious, as in compiling them he was industrious; the compiler then had been less liable to criticism; and yet his book, even as it is come to our hands, discovers the characteristic of Cicero's genius; for, however you may retrench from it, you can add nothing to it.

Several

Several things concur to render this manner extremely difficult. In the first place, all ridicule has something in it that is buffoonish, that is, somewhat that is low, and oftentimes purposely rendered mean. In the next place, it is never attended with dignity, and people are apt to construe it in different senses, because it is not judged by any criterion of reason, but by a certain unaccountable impression which it makes upon the hearer. I call it unaccountable, because many have endeavoured to account for it, but I think without success. Here it is that a laugh may arise, not only from an action or a saying, but even the very motion of the body may raise it; add to this, that there are many different motives for laughter. For we laugh, not only at actions and sayings that are witty and genteel, but such as are stupid, passionate, and cowardly. It is therefore of a motly composition, for very often we laugh with a man, as well as laugh at him. For, as Cicero observes, "the province of ridiculousness consists in a certain meanness and deformity." The manner that points them out is termed wit, or urbanity. If, while we are pointing them out, we make ourselves ridiculous, it is termed folly. Even the slightest matter, when it comes from a buffoon, an actor, nay a dunce, may, notwithstanding, carry with it an effect that I may call irresistible, and such as is impossible for us to guard against. The pleasure it gives us bursts from us even against our will, and appears not only in the expression of our looks and our voices, but is powerful enough even to shake the whole frame of our body. Very often, as I have already observed, one touch of the ridicule may give a turn to the most serious affairs. We have an instance of this in some young Tarentines, who, having, at an entertainment, made very free with the character of King Pyrrhus, were next morning

morning examined before him upon what they had said, which though they durst not defend, and could not deny, yet they escaped by a well-turned joke. Sir, says one of them, if our liquor had not failed us, we would have murdered you. This turn of wit, at once, cancelled all the guilt they were charged with.

Yet this knack, or whatever the reader pleases to call it, of joking, I will not venture to pronounce to be void of all art, for it admits of certain rules, which Greek and Latin writers have reduced into a system; I however affirm, that its success is chiefly owing to nature, and the occasion. Now, nature does not consist in the acuteness and skill which some possess above others in the inventive part, (for that may be improved by art) but some people's manner and face are so well fitted for this purpose, that, were others to say the same thing, they must lose a great deal of their gracefulness, With regard to the occasion and the subject, they are so very serviceable in matters of wit, that dunces and clowns have been known to make excellent repartees, and indeed every thing has a better grace that comes by way of reply, than what is offered by way of attack. What adds to the difficulty is, that no rules can be laid down for the practice of this thing, and no masters can teach it. We know a great many who say smart things at entertainments, or in common conversation; and indeed they cannot avoid it, because they are hourly attempting it. But the wit that is required in an orator is seldom to be met with; it forms no part of his art, but arises from the habits of life. I know no objection, however, against prescribing exercises of this kind, to accustom young gentlemen to compositions of a brisk, lively turn of wit. Nay, the sayings which we call good things, and which are so common on festival and merry-

making days, may be of very great service to the practice at the bar, could they be brought to answer any purpose of utility, or could they be brought in aid of any serious subject. At present, however, they serve no purpose, but that of useless diversion to younger persons.

We commonly make use of several words to express the same thing; but, if you examine, you will find each of them to have its own peculiar signification.

Thus, by urbanity* is meant a polite discourse, which in its words, accents, and use, discovers a certain delicate taste, joined to a secret tincture of learning taken from the conversation of men of letters, and so is opposed to rusticity.

By the graceful† is meant what appears in a beautiful, genteel manner.

The humorous,‡ in ordinary discourse, is applied only to the ridiculous; but this is not founded in nature, though it is necessary that in all ridicule there should be humour. For Cicero attributes all humour to the Athenians, though, in their nature, they were not very risible. And Catullus, when he says, there is not one grain of humour or salt in so huge a body, does not mean there was nothing ridiculous in the body. Therefore, the salt of a discourse is that natural seasoning, which prevents its being insipid; and which, upon deeper reflection, leaves, as it were, a relish upon the palate, enlivens the attention, and preserves the oration from creating a laugh. And as salt, though pretty liberally sprinkled on meat, if not excessive, affords a pleasing relish; so, in speaking, this salt has somewhat so pleasing, that it raises a desire of hearing more.

* Urbanitas. † Venustum. ‡ Salsum.

think

I think likewise that the arch* is not used in the ridiculous only; for Horace would not make the character of Virgil to be arch, if that was its meaning. I think rather that it signifies a genteel and elegant manner. And thus Brutus used it, as Cicero shews in one of his epistles, Næ illi sunt Pedes faceti ac deliciis ingredienti molles; which agrees with that expression of Horace,

——The arch and slyly grave
The woodland muses to their Virgil gave.†

The jest‡ is opposed to seriousness; for sometimes we feign, affright, and promise in jest.

Raillery§ is in common to all these kinds, but it properly signifies an artful way of turning a person into ridicule; thus it is said that Demosthenes had urbanity, but did not understand raillery.

Now ridicule is the property of all the different

* Facetum.] It must be acknowledged, that the original words here made use of by our author, have in them somewhat that the English language does not quite come up to. I have however translated them. The word facetum in particular is extremely difficult to translate into English by any one word. It implies a delicate archness of wit that steals upon the mind of the hearer, without altering one feature in the speaker. I cannot explain it better than by referring my English reader to the comedy of the drummer, where the facetum is perhaps better hit off than even by Terence himself. In short, Mr. Addison, next to Shakespear, possessed more of the facetum than any English writer. For that species of humour for which Swift is so deservedly celebrated, was not the facetum, but something more violent. The French writers have nothing of the facetum; the humour of Rabelais is strained, and therefore is in direct opposition to the facetum; and that of Moliere is not high enough seasoned. The Italian writers seem to have no idea of it. Cervantes, and one or two more Spanish authors, possessed it in an eminent degree. But the great pattern of the facetum was Shakespear; nay, he had the art to carry it with a happy effect into tragedy.

† Molle atque facetum, Vigilio.

‡ Jocus. § Dicacitas.

kinds

kinds of wit I have here treated of; and the first division of it is the same with that into which all discourse is divided; that is, into things and words. As to the practice of it, it is mighty simple; for it arises either from others or from ourselves, or from indifferent objects. When from others it operates by reproach, by refutation, by dashing, by retorting, or by eluding. When from ourselves by discovering somewhat of the ridiculous, or what Cicero * calls it, over and above absurd.† For the things which would seem very stupid, did they escape us through inadvertency, are extremely agreeable when we throw them out to design. There is, according to the same author, a third kind of the ridiculous, which consists in baulking the expectation, by giving a word, or a circumstance, a turn quite different from what we expect; and this I call the ridicule arising from an indifferent object, because it regards neither me nor you.

We may either act or speak ridicule. Sometimes a grave way of doing an arch thing occasions great ridicule. Thus when the consul Isauricus had broken the curule chair belonging to the paætor Marcus Cælius, the latter erected another chair slung upon leathern straps, because it was notorious, that the consul on a time had been strapped by his father. Sometimes ridicule attacks objects that are past all sense of shame; for instance, the adventure of the casket, mentioned by Cicero in his pleading for Cælius. But that was so scandalous a thing, that neither the orator nor any person in his senses could enlarge upon it. We may make the same observation, when there is any thing droll in the look

* These are likewise absurd, but for that reason often very ridiculous, and fit not only for players, but in some measure for us. Cicero de Orat. l. 2. cap. 67.

† Aliqua subabsurda.

or the manner; for they may be rendered extremely diverting, but never so much, as when they appear to be very serious. For nothing is more shocking and stupid than to see a man always upon the titter, and, as it were, beating up for a laugh.* But though a grave, serious look and manner add greatly to ridicule, and are indeed sometimes ridicule itself, by the person remaining quite serious, yet still it may be assisted by the looks, and the powers of the face, and a certain pleasing adjustment of one's whole gesture; but always remember never to overdo.

As to the ridicule that consists in words, its charecter is either that of wantonness and jollity, as we generally saw in Galba; or cutting, such as what the late Junius Bassus possessed; or blunt and rough, like the manner of Cassius Severus; or winning and delicate, like that of Domitius Afer. The place where we employ those different manners is of great importance. For at entertainments, and in common discourse, the vulgar are wanton, but all mankind may be chearful. Meanwhile, let all malice be removed, and let us never adopt that maxim, rather to lose our friend than our jest. With regard to our practice at the bar, if I was to employ any of the manners I have mentioned, it should be that of the gentle, delicate kind. Though at the same time we are allowed to employ the most reproachful and cutting expressions against our adversaries; but that is in cases of capital impeachments, when justice is demanded upon an offender. But, even in that case, we think it inhuman to insult the misery or the fallen state of another. For such are generally less to blame than they are represented, and insults may recur upon the head of the person who employs them.

* Laugh.] The original here is irrecoverable.

We

We are in the first place, therefore, to consider, who the person is that speaks, what is the cause, who is the judge, who is the party, and what are the expressions. An orator ought by all means to avoid every distortion of look and gesture employed by comedians to raise a laugh. All farcical, theatrical pertness is likewise utterly inconsistent with the character of an orator; and he ought to be so far from expressing, that he ought not to imitate any thing that is offensive to modesty. Nay, though he should have an opportunity to expose it, it may sometimes be more proper to pass it over.

Farther, though I think the manner of an orator ought always to be elegant and genteel, yet he should by no manner of means affect being thought a wit. He should not, therefore, be always witty when he can, and he ought sometimes to sacrifice his jest to his character. What indignation does it give us in a trial upon atrocious crimes, to hear a pleader breaking his jokes, or an advocate merry, while he is speaking in defence of the miserable!

Besides, we are to reflect that some judges are of so serious a cast, as not to endure any thing that may raise a laugh. Sometimes it happens, that the reproach we aim at our opponent, hits the judge himself, or suits our own client. And some are so absurd that they cannot abstain from expressions that recur upon themselves. This was the case with Longus Sulpitius, who being himself a very ugly fellow, and pleading a cause that affected the liberty of another person, he said, that nature had not given that man the face of a freeman. "Then replies Domitius Afer to him, "You are in your soul and conscience of opinion, that every man who has an ugly face ought to be a slave."

An orator likewise is to avoid every thing that is ill-mannered or haughty, offensive in the place, or unseasonable

unseasonable upon the occasion. He is likewise to say nothing that seems premeditated and studied before he came into court. Now, as I have already said, it is barbarous to joke upon the miseries of another; while some are so venerable, so amiable in their universal character, that a pleader only hurts himself by attacking them. As to our friends, I have already laid down rules with regard to them.

One maxim is of use not only to the purposes of an orator, but to the purposes of life; which is, never to attack a man whom it is dangerous to provoke, lest you be brought to maintain most disagreeable enmities, or to make most scandalous submissions. It is likewise highly improper to throw out any invectives that numbers of people may take to themselves; or to arraign, by the lump, nations, degrees, and ranks of mankind, or those pursuits which are in common to many. A man of sense and good breeding will say nothing that can hurt his own character or probity. A laugh is too dearly bought, when purchased at the expence of virtue.

It is, however, extremely difficult to point out all the different manners of raising a laugh, and the occasions that furnish it. Nay, it is next to impossible to trace all the different sources of ridicule. In general, however, a laugh may be raised either from the personal appearance of an opponent, or from his understanding, as it appears by his words and actions, or from exterior circumstances. These, I say, are the three sources of all vilifying, which, if urged with acrimony, become serious; if with pleasantry, ridiculous. Now, all the ridicule I have mentioned arises either from exposition, narrative, or characterising.

Sometimes, but seldom, it happens that an object of ridicule actually presents itself upon the spot. This happened to Caius Julius, who told Helmius

Mancia, who was deafening the whole court with his bawling, that he would show him what he resembled. The other challenging him to make good his promise, Julius pointed with his finger to the distorted figure of a Gaul, painted upon the shield of Marius, which was set up as a sign to one of the booths that stood round the forum, and in fact was very like Mancia. The narrative of imaginary circumstances may be managed with the greatest delicacy and oratorial art; witness Cicero's narrative concerning Cepasius and Fabritius, in his pleading for Cluentius; and the manner in which Marcus Cælius represents the race run between Caius Lælius and his colleague, which should get first to his province. But all such recitals require every elegant, every genteel touch the orator can give them, and the whole must be wrought up with the most exquisite humour. How much ridicule does Cicero apply to the description of the retreat of Fabritius? "Thus he thought himself doing mighty matters, while he was from his magazines of eloquence, playing off those most pathetic expressions. Look back my lords upon the mutability of fortune; look back upon the variety and alterations to which human life is subject; look back upon the old age of Fabritius; now when he came to the last look back, which he had so often repeated to embellish his discourse, he looked back himself, but, by this time, Fabritius had stolen out of court;" and what follows is in the same strain, for the passage is well known. All this high finishing did not contain a word that was fact, more than that Fabritius had left the court.

The whole of the pleading of Cælius, which I have mentioned is extremely beautiful. In what manner he was transported, whether in a ship or fishing-boat, nobody knows. The Sicilians, who love mirth and raillery, say that he sat across a dol-

phin's back, and so was transported like another Arion."

Cicero thinks that humour is most proper for a narrative, and smartness for a repartee. Afer Domitius had wonderful talents of this kind, and his orations are full of very humourous narratives; nay, a book has been published of his witty sayings. We may refer to this head another manner, which does not consist in repartee, or quaintness of wit, but in a more continued action. An example of which we find in Cicero's second book upon the character and qualifications of an orator, and in several other passages of the same, where Crassus is introduced pleading against Brutus. For when Brutus, in his impeachment of Cneius Plancus, made two readers read out of two treatises, the one concerning the Narbone colony, the other upon the Servilian law, the contradictions of Crassus, the author of them, and advocate for the defendant, Crassus called up three readers, and put into their hands the three dialogues composed by the father of Brutus; in one of which treatises, mention was made of the author's Privertine estate; in a second of his Alban estate; and in a third, of his Tibertine estate. And then he asked Brutus, what was become of those estates! Now, Crassus had sold them all, and was thus rendered infamous for having dissipated his patrimony. Apologues and certain little stories, which sometimes come in a pleader's way, admit graces of this kind; but short turns of wit are smarter, and quicker in the execution they do. Now these turns are applied either in charging or replying to a charge, and the manner of both is pretty much the same in one respect; for nothing can be thrown out in a charge, that may not be sent back by a rebound in the reply. Some things however are peculiar to a reply; and sometimes they slip from

from us in the heat of passion. Other manners may be more proper for altercation, or the examination of witnesses.

As there are, however, many sources of the ridicule, I am once more to caution my reader, that all of them are not proper for an orator. With regard to equivocal expressions, I dislike those obscurities* that puzzle the understanding, as well as the ribaldry made use of by the lower set of people, and convey something that is spiteful in a double meaning. I likewise disapprove of the jokes that fall sometimes from Cicero, but, as I have observed before, never in his pleadings. For example, a man who was reckoned to be a cook's son, happened to stand for a public office, and was consequently dressed in white; Jack, says Cicero to him, thou art dressed just to my taste.† Not that I am for excluding all double meanings of wit, but I am for seldom making use of them, because they never have a good effect unless the thing exactly coincides with the word; which rarely is the case.

For this reason I am almost tempted to reject, as scurrilous, the play of words which Cicero applied to Isauricus, whom I have already mentioned, who

* The original here mentions the Atellanæ, which was a kind of double entendre made use of in a sort of comedy which the men of quality in Rome were suffered to act in, without any infamy: whereas all other actors and stage-players were held to be infamous. This commedy had its name from Atella, a town in Italy, where either the inhabitants were a witty sort of people, or where it was invented.

† There are two exquisite puns, or double entendres, in the original here, which either signifies, cook, I will give you some of my soup; or, I likewise, sir, will give you my vote. As it was impossible to translate it literally, I have given it an English turn; but I am afraid the wit of it will be lost upon the reader, if he does not reflect that our English cooks are generally dressed in white, and that Jack is not only a man's name, but apiece of kitchen furniture.

happened

happened to be much freckled. It is surprising,* says he, that a father who was a fair man, should beget a painted son. But there is a very fine manner that comes under the same head; for example, when the manager of the impeachment against Milo asked, Whether it was not late† when Clodius was killed? Late, indeed, replied Milo. This very instance is sufficient to prove that the whole of this manner is not to be rejected. Some words there are which not only convey several meanings, but contradictory meanings. Thus Nero, before Cicero's time, said of a pilfering slave, That‡ he was the only servant from whom nothing in his house was either sealed or concealed.

This manner may sometimes be carried into a riddle. Thus Cicero, mentioning the mother of Pletorius, who impeached Fonteius, says, That§ she sinned while alive, and was executed when dead. For it was reported that she kept a brothel when she was alive, and after her death her goods were sold. Another kind of this wit is as follows: Fabius Maximus, reflecting upon the smallness of the

* The goodness of this pun depends a good deal upon the agreement of the thing with the word. The original is, Miror quid sit, quod pater tuus homo constantissimus te nobis varium reliquit. Now if Isauricus was really an inconstant treacherous fellow, the pun in the original is not near so execrable as it is in the translation. The word varius is by some pretended to signify one pitted with the variolæ, or small-pox; but that is not very likely, and therefore more probably signifies as I have translated it.

† Orig. Sero.] The English here pretty well answers the original.

‡ See Cicero de Oratore, l. 2, c. 61.

§ This pun is execrable even in the original; Dum vixisset, ludum; postquam mortua esset, magistros habuisse. The Reader is to observe that, amongst the Romans, the appraisers and auctioneers of goods that were sold for debt were called magistri; and this answers to our executions for debt.

presents

presents made by Augustus to his friends, said, They* were not presents, but compliments.

It is a poor way some have of coining words by changing, adding, or taking away letters. Thus, roaration for an oration, which had in it a good deal of bombast. Acid, to mark the disposition of a man whose name was Placid. Tolly, to mark a turnpike-man, whose name was Tully. But all this kind of wit is very mean when it does not answer in facts, as well as in expressions. Thus when Afer saw Manlius Sura, while he was pleading a cause, stamping about, starting up, flinging his hands about, and tossing the lappets of his gown from one side to another, he said, That he was not doing, but overdoing for his client.† Now, there would be wit in the word overdoing, though it had no resemblance to the word doing. This kind of wit likewise may arise by altering or suppressing the pronunciation, or by running two words into one. The whole of the manner is indeed very despicable; but sometimes, though very seldom, it may be serviceable. We may say the same thing of the puns that consist in playing upon words. Cicero, especially in his pleading against Verres, gives us many instances of that kind; but he always puts them in the mouths of other people. For Verres in Latin signifies both a beesom or broom, and a boar-pig: he therefore sometimes says, that he was a broom which swept very clean; sometimes, that this pig gave more trouble to Hercules (whose temple he had plundered), than ever the Erymanthian boar had given him.

* The original here cannot be translated, but I have given the substance and sense of the passage.

† I have kept as near the author's words as possible in the two last instances, but was obliged to substitute one in the place of the first in the original.

† Orig.] Non agere, sed satagere.

Sometimes

Sometimes that it was contrary to the sacerdotal function (for Verres had succeeded one Sacerdos in his government) to leave such a pernicious pig behind him unsacrificed. Yet certain occasions may occur, when this manner may be happily applied. For instance, when Cicero, in his oration for Cecinna, is inveighing against an evidence, one Sextus Clodius Phormio; this Phormio, says he, is as black and as impudent a villain as the Phormio of Terence. Upon the whole, therefore, the wit which arises from the properties of things, is both more penetrating, and more elegant, especially where there is a striking likeness to some other object that is mean* and disagreeable. The antients were very fond of this kind of wit. But it is not applicable only to men, but to beasts. Thus when I was a boy, we called Junius Bassus, who had a remarkable, braying, bullying manner, the ass with two legs. And Sarmentus, or Publius Blessus, used to call Junius, who was black, whithered, and stooped, an iron broach. This manner of raising a laugh is now greatly in vogue.

Sometimes this similitude is very striking, and sometimes is by way of inference. Thus, when Augustus saw a soldier trembling very much as he was presenting him with a memorial, Friend, says he, why do you tremble, as if you were stretching forth a penny to an elephant? Sometimes there is a patness in things, as if they happened on purpose to give rise to this kind of wit. Thus, when Vatinius was accused by Calvus, the latter reproached him for his indecency in having any thing of white about him, especially a white handkerchief with which he

* Our author gives us two examples of this, which cannot be translated. Lentulus was called Spinther, because of his resemblance to a player of that name; and Scipio, Serapion, because a slave of that name resembled him.

often

often wiped his face. Nay, says the other, though I am now impeached, I eat even white bread.*

The relation which one thing may have with another, gives likewise rise to a delicate manner, by transferring their properties to a quite different purpose than that which they really are made for. Thus when the representation of the towns which Cæsar had taken was exhibited in models of ivory, and when a few days after the towns taken by Fabius Maximus were exhibited in wood, Chrysippus called the latter, The Cases of Cæsar's Models. The Poet Pedo said of a gladiator who carried a fish for his crest, and was pursuing another gladiator, who fought with a net, but without any blows passing between them, That† the former wanted to take the other alive. Sometimes a double meaning is joined to the resemblance. Says Lucius Galba to one who was playing in a loose careless manner, You court fortune‡ as carelessly as if you was a courtier indeed. Now there is an ambiguity in the word court, which is applicable to the business both of the player and the courtier. But I here take my leave of this manner. I shall only observe, that it has in it a great mixture of the other manners, and the more mixed it is, it is the better.

* The wit of this saying probably arises from the meanness of the prosecutor, who was either so poor or so avaricious, that he did not allow himself to eat white bread, and hardly any one but slaves eat brown among the Romans.

† The original is as I have translated it, but I am somewhat suspicious of it. The Mirmillones had the figure of a fish on their crests. The Retiarius threw a net over the head of the Mirmillo, and stabbed him with a fork while he was entangled in it.

‡ Orig.] Sic petis tanquam Cæsaris candidatus. The verb petere in Latin signifies to strike, to go after, or to court a thing, therefore the equivoque is, in a great measure, lost in English. The reader is to observe, that under the Cæsars, the favourite they recommended to public employments were always sure to succeed, and therefore were at very little pains to court the people, who nominally were their electors.

We

We may make the same observation upon the good things that are spoken by way of contrast or opposition. Augustus Cæsar sent a message in the following terms to a Roman knight, whom he saw in the midst of the public diversions eating and drinking: Friend, when I want to dine I always go home. That may very well be, replied the other, for I do not suppose you are afraid of any body's taking your place while you are gone. There are several ways of saying good things by way of contrast. For the same Augustus having cashiered with disgrace one of his field-officers, the latter, amongst other remonstrances happened to say, What shall I say to my father? Say to him, replies Augustus, that I am fallen under your displeasure. But when one asked Galba to lend him his cloak, That I cannot do, replied he, for I am to stay at home all day. Now the truth was, the rain was pouring through the roof of his house. There is a third manner, which was made use of by a certain person, for whom I have too great a respect to name him; You are more lustful, said he to one, than any—eunuch. Here the expectation is baulked through the application of the contrariety. There is another manner that may properly be mentioned here, but very unlike any of the former. It was practised by Marcus Vestinius, when he heard of the death of a fellow worn out by diseases, Then* he still continues to rot, says he. I should overload this treatise, and render it no better than a common jest-book, where I here to collect all the good things said by the ancients. I shall only observe, that joking sometimes admits of what I have observed on the subject of arguments. A definition, for instance, is em-

* I have taken some liberty with the original, which is confessedly desperate, because I am persuaded I have hit upon the meaning of my author.

ployed

ployed by Augustus, when speaking of two pantomimes, who strove with one another to excel in their several gestures, he said, That the one resembled a dancer, and the other a confounder of dancing. Galba made use of partition in joking; for when another person wanted to borrow his cloak, You cannot have it, said he, for if the weather is fair you will have no occasion for it, and should it rain I shall wear it myself. Upon the whole, therefore, every thing that admits of general divisions, of subdivisions, properties, differences, conjuncts, adjuncts, consequences, premises, contrasting, causes, effects, a comparision of equals, from the greater, or from the less, admits of wit likewise. Wit enters into all the figures of speech. It is likewise very useful in the hyperbole. Thus Cicero, speaking of Memnius, who was a very tall man, says, That he was obliged to stoop as he went through the Fabian arch. In like manner, Publius Oppius speaking of the race of the Lentuli, who, from father to son, diminished in stature, said, It seems, it was the property of Lentils to degenerate. As to irony, even when it contains matter of truth, it forms of itself a species of wit. Didius Gallus, after earnestly soliciting for a government, when he had obtained it complained that it had been forced upon him. Then, good sir, replies Afer, with great wit, do something at last for the good of your country. Thus Cicero, hearing of the death of Vatinius, but being told, at the same time, that the report was uncertain; Be that as it will, said Cicero, I will enjoy it in the meanwhile, though I may pay for it afterwards. When he was characterizing Marcus Cælius, who, it seems, was better at impeaching than defending, he said, He made very good use of his right hand, but that his left was nought.

Figures of sentiments admit of all this kind of wit, and some distinguish the different sorts of witty sayings,

sayings, according to the difference of those figures. For, we question, we doubt, we affirm, we threaten, and wish, we say some things in pity and some things in passion. Now, all those emotions, when it is plain we are not in earnest, convey ridicule. As to downright folly, that is ridiculous of itself without the help of art. But the ridicule arising from the author is of the dispicable kind. For, to make the thing we say ridiculous, without appearing ridiculous ourselves, is true wit, and requires great art to effect it. Thus, Tityus Maximus asked Carpathius, as he was coming out of the theatre, Whether he had seen the play? I cannot say I did, replied Capathius, for I was playing at tennis in the orchestra. Now, this answer made the other's question doubly ridiculous.

Refutation admits of ridicule, either by way of denial, confuting, defending, or evading. There was some humour in the answer, by way of denial, which was made by Curius Manius, when his impeacher exposed, in every corner of the town, his picture done upon canvas, either naked and bound, or redeemed by his friends from his gaming debts. Then, said he, it seems I had never one lucky throw.* Sometimes we may confute from a known fact. Thus, when Vibius Curius called himself a great many years younger than he was; Then, said Cicero, you was not born when you and I used to declaim together. This is sometimes finely done by a sneering assent. Thus Cicero, another time, when Fabia Dolabella said she was thirty years of age; That

* Though I see no great harm in this saying, yet I durst not imitate the Abbé Gedoyn in wholly omitting it, because it has reference to the denial, which is one of the heads laid down. Perhaps the original is faulty; but I have no great regard to the objection brought against it by Burman. The siparium, which I have translated canvas, was, indeed, properly a kind of stage-curtain; but it may be taken for any piece of cloth.

must

must be true, replied he, for I have heard you say so these twenty years. It has a good effect, when, in denying a charge, you substitute, in its place, somewhat that is more cutting than the charge itself. Thus Domitia charged Passienus with abusing her for sordid practices, by saying that she used to sell old shoes. I never said so, upon my honour, replied he; What I said was, that you used to buy old shoes. A certain Roman knight defended himself with some humour, when Augustus charged him with having eat up his patrimony. I thought, said he, it was my own.

There are two ways of evading; first, by dissipating, or confounding a man's vanity and boasting. Thus, when Pomponius shewed Cæsar a wound in his face, which he said he had got for taking his part in the sedition raised by Sulpitius; Prithee, friend, says Cæsar, never again look behind you when you are flying from your enemies. Secondly, we may humorously destroy the very charge. Thus when some people were reproaching Cicero with being about to marry, in his sixtieth year, Popilia, who was a young virgin; To-morrow said he, she will be a woman. We have another stroke of that kind in Cicero. For, when Curio always began his pleading by complaining of his great age, Cicero observed that such introductions became every day more familiar to Curio. There is likewise a way of assigning opposite causes, which has a very good effect in eluding a thing. When Vatinius, who had the gout, pretended to be a good deal better, and, as a proof of his recovery, said, that in one day, he had walked a couple of miles; That may be, said Cicero, for the days are now at the longest. Augustus, when he was told by the people of Tarracona, that a palm-tree was growing from his altar; I can judge from thence, replied he, how very often you put fire upon

upon it. Cassius Severus threw a charge upon another; for when the prætor reproached him, that his advocates had affronted Lucius Varus, and Epicurian, and very intimate with Cæsar; I am not, replied he, acquainted with the parties you mention, but, if I am not mistaken, they are Stoics.*

There are many ways of catching a thing at a rebound. The genteelest is, when it is assisted by some resemblance of expression. Thus, when Snellius told Thracallus,† If these things are so you are to turn out. And, if these things are not so, I am to turn in, replied the other. Cassius Severus eluded a charge brought against him, on account of Proculeius having forbid him his house: Pray, said he, do you see me going thither now? One joke may be eluded by another. Thus, when the Gauls presented Augustus Cæsar with a collar of gold weighing a hundred pounds, Dolabella, between jest and earnest, said to him, Pray, sir, honour me with a collar. A collar! replied the other; no, I'll honour you with a crown.‡ One lie, likewise, may be eluded by another. Thus, when a certain person told Galba, that he bought in Sicily, for three farthings, a lamprey five foot long. I think nothing of that, replied Galba, for lampreys there are so long that fishermen make use of them for ropes. The seeming to acknowledge a charge may answer the purpose of refuting it, and it has a very fine effect. Thus, when Afer was pleading against a freed-man of Claudius Cæsar, and was opposed by another freed-man, who was advocate against him,

* Stoics.] Meaning, that, if an affront was given, it might be on account of the difference of their philosophical opinions.

† Orig. Si hoc ita est, is in exilium; non est ita, redii.] The reader will, perhaps, find as little wit in the original, as in the translation, or rather imitation of this passage.

‡ Crown.] Because these crowns, though more honourable than collars, cost little or nothing, being made of oak, laurel, grass, or the like.

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in these terms, Are you not always railing against Cæsar's freed-men? Yes, replies the other, but I see it is all to no purpose. Akin to this is, not to deny a charge when it is palpably false; and this manner affords matter for good repartees. Thus, Philippus asked Catulus, Why he barked? Because, replied the other, I see a thief.*

It seldom or never is proper for an orator to raise a laugh at his own expence; for that is more proper for buffoons. But, there are as many ways of doing that as of raising it at the expence of another. I, therefore, only mention that manner, though indeed it is but too common. There is another manner, which, though it admits of ridicule, is unworthy a gentleman; I mean that of saying any thing that is low or passionate. A certain person fell into this indecency, when one greatly below him lost the respect he owed him: I'll give you a box, says he, on the ear, and then prosecute you at law for hurting my hand by the hardness of your head.†

Now, it is doubtful, whether this saying ought to raise laughter, or indignation.

I am now to speak of that manner which consists in, as it were, surprise, or in understanding things in a different sense from that in which they are meant; and, indeed, it has great beauties. An unlooked-for turn may be made use of in an attack, as in the example given us by Cicero? What

* Thief.] Turnebus, the best of our author's commentators, is of opinion, that Catulus did not call Philippus a thief, for that would have been too impolite, but the person for whom he was pleading. But, was it not equally impolite for the other to ask such a question? See Cic. de Orat. l. 2, c. 54.

† I am not sure whether many modern men of quality would have been pleased to have been the author of this saying, extravagant as it is. The Abbé Gedoyn has entirely mistaken the sense of it in the original. Meanwhile, I am of opinion that it is censured by our author chiefly because it is a kind of proverbial piece of ribaldry, made use of among the common sort of people.

is wanting in this man, but money and virtue? Or when Afer said, I will say that for him, that, for pleading a cause, no man alive is more properly—drest. Or by way of prevention; as when Cicero, hearing that Vatinius was dead (which proved not to be true), asked his freed-man, Ovinius, whom he met, Is all right? All very right, answered the other. I am glad of it, said Cicero, for I had heard your master was not dead.

Feigning and dissembling, which are pretty much of the same nature, are likewise very proper to raise a laugh. By feigning, I mean your seeming to be persuaded of what you know to be false; by dissembling, your seeming not to apprehend the real meaning of another. For example: though Afer understood that Celsina, whom his antagonist was perpetually talking of, was a lady of great rank, yet he asked, What kind of a man is this Celsina? Cicero gave an example of dissembling, when the evidence of one Sextus Annalis having hurt his client, the opposite party pressed him to say, Whether he knew any thing of Sextus Annalis? Cicero, affecting to understand him as speaking of the sixth annal of Ennius, began with repeating it:

O thou, who canst the mighty causes tell,
Why blood and war the Roman state befel.

Ambiguity of expression very often furnishes out this manner. Thus Casselius, when a client came to ask his opinion about dividing his ship; I am of opinion, said he, that if you do it will sink.* A thing receives, likewise, a different meaning, by turning, in answer to a question of a very serious nature, to somewhat that is a matter of indifference. Thus, when one was asked, What do you think of a man who is caught in adultery? Why, answered he, I

* Meaning, perhaps, the cargo, or the property of the ship.

think him a heedless fellow. There is another manner of this kind, that arises from our leaving our meaning to be guessed. Thus, in Cicero, when a man was complaining that his wife had hanged herself upon a fig-tree. Pr'ythee, my dear, said the other, canst thou get me some slips of that same tree, that I may graft them in my garden? And, indeed, all this manner consists in understanding a thing differently from what you know to be its real, genuine meaning. This is done by suppressing either our own sense, or that of another, or by throwing out something that is impossible. Thus when one complained to Juba, that his horse had bespattered him, Then, replied Juba, you really think that I am a Hippo centaur.* Here he suppressed the other's meaning. But Caius Cassius suppressed his own, in seeing a soldier going to fight without his sword; I know, my friend, said he, that your fists will do great execution. And when Galba sat down to supper upon some flounders, the under-side of which he perceived had been eaten before, Let us dispatch, said he, for there are people under the table supping upon these fish. The repartee of Cicero, upon the man who was not born when he declaimed, may be likewise ranked under this head.

There is a fiction likewise arising from irony: such is that which Cæsar made use of, when a witness said, that the accused party aimed a stroke at a certain part of his body,† which plainly aggravated the charge.

* Meaning that his horse was no part of himself.

† Orig. Et esset facilis reprehensio, an illam potissimum partem corporis vulnerare voluisset. Quinctilian's meaning must certainly have been as I have translated these words; for, by taking the word reprehensio with the Abbé Gedoyn, and the commentators, in a ludicrous light, that is, for ridicule, the whole merit of Cæsar is destroyed; for he wanted to turn, not one ridiculous circumstance into another, but a very serious charge into a very ludicrous circumstance.

charge. Cæsar was sensible of this; Where, says he, would you have had the man to strike, armed as you was, with a coat of mail, and a helmet? There is likewise an excellent manner of destroying one supposititious or feigned circumstance by another. For example, Domitius Afer had by him a last will, which he had made a long time ago, and a friend whom he had been but lately acquainted with, hoping some advantage by his altering it, pretended to consult him by producing a false will, in which he had left all to a general officer, who was his heir at law, and asked his opinion, whether he ought not to cancel that will, and make another, in case the officer did not make him his heir in his turn? By no means, answered Afer, for, if you do, you will disoblige him.*

But of all those manners, that is preferable which has the least offence in it, and is of the easiest digestion. Thus, when Domitius Afer saw an ungrateful fellow, whom he had served in a law-suit, avoiding the sight of him in the forum, he sent his remembrancer to him, with his compliments, to assure him, that he had done him a favour in not seeing him. When his steward, who, it seemed, was not very regular in his accounts, told him, as a proof of his honesty, that he had not bread to eat, and that he lived upon water; Prythee pay me what thou owest me, says he, and live upon what thou likest best. A joke that is not so severe, as the author of it may be, upon another, is likewise very agreeable. When a candidate for a public office asked for Afer's vote, he told him, as an inducement, that he had always entertained the highest regard for his family.

cumstance. Besides, the word reprehensio implies in it nothing that is ludicrous.

* The original of this story is prodigiously perplexed and depraved, so that I am not sure that I have hit upon the auther's sense.

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I make no doubt of it, said Afer, and I know it to be true.

It is sometimes ridiculous for a man to talk of himself; and sometimes a thing which would carry with it the height of ill-manners, were it said in a person's absence, creates a laugh when we tell it him to his face. Thus, when a soldier presented a very impudent request to Augustus Martianus, who, he more than suspected, was about to do the like, came in at the very same time. Friend, said Augustus to the soldier, I will no more grant what you ask for, than I will grant to Martianus what he is about to ask for.

A happy application of a verse, standing as it is in the original, has often a fine effect. This manner is so easy, that Ovid found lines enough in the Tetrastic of Macer, to compose a satyr upon bad poets; and it is still the more agreeable, if it admits to be dashed here and there with a double meaning. Thus Cicero applied to Accius,

None but Ulysses could have so escap'd.

Because he was a very cunning, artful fellow, and Cicero suspected he had not acted fair in a cause he was engaged in. Sometimes the words of a verse may admit of some alteration: thus, when a fellow, who, when poor, was reckoned next to an ideot, came to have the preference in giving his opinion, after he fell into a large inheritance, Cicero said of him, His heritage was wit: thereby altering character into heritage. Parodies and proverbs, partly introduced, have likewise great beauty. Thus a man, fallen into a well, begged of a neighbour, who was passing by, to drag him out. Call to some one, says the neighbour, who does not know you. An allusion to history, likewise, shows a man of fine taste. Thus, when Cicero, upon the trial of Verres, was examining

a witness, Hortensius, who was advocate on the other side, told him, that he did not understand these riddles. What! replied Cicero, though you have a sphinx at home. Alluding to the figure of a sphinx in bronze, of great value, which Hortensius had received in a present from Verres.

A witty absurdity is an imitation of stupidity, and both would be the same, were not the absurdity affected. Thus, when some were laughing at a person for his taste in buying an old flat candlestick, It will serve me, says he, to dine off. A smart thing may sometimes resemble an absurdity, by seeming to be thrown out without any manner of meaning. Thus when Dolabella was about to purchase a slave, who offered himself to sale, he asked him, whether he had his master's leave to be sold; He has, replied the slave, sold his house. They who are convicted of a mistake, sometimes put a good face upon the matter, by somewhat that is humourous. An advocate, in examining a witness, who pretended that he had been wounded by the defendant, asked, whether he had the scar to show. Upon the witness showing him a large scar upon his thigh, the advocate, far from being confounded, only answered, You ought to have received that wound in your side. We may make even a happy use of affrontive expressions. Said one, concerning Hispo, I have twice accused this same Hispo. And twice have you lied, replied Hispo. A general officer, who, it seems, had not the best of moral characters, asked Fulvius, whether the Testament he produced was subscribed; It is, Sir, replied Fulvius, and the subscription too is no forgery.*

Such

* Having thus finished the translation of the witty sayings mentioned by our author, I must declare, that they give me no high opinion of the Roman wit, especially under the emperors. This

Such are the kinds of wit, which, either according to my own observation or the precepts of others, give rise to ridicule. But I think proper to repeat it, that the manners of speaking in joke are as various as those of speaking in earnest; which are directed according to characters and persons, places, times, and accidents, which are almost infinite. Therefore I have only touched upon particular instances, because I had been to blame entirely to have omitted them. But with regard to the rules I have laid down, concerning the practice and manner of introducing a witty thing, they may, perhaps, be not of so much service as I could wish, but they are indispensably necessary.

Domitius Marsus, who has wrote with great judgment upon urbanity, adds to the observations I have made, " That there is a manner of wit, which has in it nothing of the ridiculous, but is applicable to the

Domitius Afer, who, it seems, was a professed wit, and in the highest vogue at the time Quinctilian wrote, were he to live in England at this time, might pass, indeed, for a good agreeable, sensible man; but I can see nothing from our author that could entitle him to the character of a man of wit and humour. It is true, a great many circumstances may be lost to us, and with them a great deal of the wit; and it is likewise true, that the text is irrecoverably corrupted. At the same time, however, some of them are certainly genuine, and intelligible in their full extent, and a few of them are extremely beautiful. But, in general, they are not comparable to those we find in our common English Jest-books. Many even of Cicero's jokes (though, besides his eloquence, he was a man of wit, and must have been considered as such in every age and country) are insipid enough. In short, this part of our author's work is not so valuable for the excellency of the wit he has transmitted to us, as it is for the application of the examples to the incomparable definitions and observations upon wit, which he has laid down, and which, I think, have been equalled in no language. Mr. Rollin has, indeed, thought proper to omit the greatest part of this chapter, and it must be acknowledged that the finest passages of it are yet to come. But I do not venture to follow him in that, because I have a great authority, that of my author himself, which tells us, he had said nothing on that head but what is necessary.

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most serious discourses, by being elegantly expressed, heightened by the touches of graceful humour, and proving the author to possess every delicacy of taste, though he says nothing that can raise a laugh." His work treats not of that wit which makes a laugh, but of urbanity, which, he says, is a manner that is peculiar to our city; and that it was not understood, till after Rome, by way of distinction, came to be called the Urbs, or the city. Now, his definition of urbanity is as follows. "Urbanity consists in a certain power comprized in a short saying, fitted equally to please, and to move every passion of mankind, and peculiarly adapted either to repel or to attack, as things or persons require." This definition, excepting the brevity which it requires, answers all the properties of eloquence: for it consists in things and persons; and the business of the most complete orator is confined to them. But, why he requires brevity, I know not.

But, in the same book, he says that many have possessed an urbanity, which has a peculiarly fine effect in narratives; and, conformably, as he says, to Cato's opinion, he defines a man of urbanity to be, "A person who is generally happy in his sayings and answers; and who, in private conversation, in public companies, at entertainments, in assemblies of the people, in short, in all places, and on all occasions, speaks with wit and propriety at the same time." An orator who answers this description can always command a laugh. But, if we admit this definition to be true, whatever is said with propriety and urbanity, is called a witty saying.

Agreeable to this observation, Marsus has divided the quality of urbanity into what is said in jest, into what is said in earnest, and into what is said between both. Now, this is the very character of wit. But, by his leave, there may be a certain kind of jocular wit,

wit, which is absolutely inconsistent with urbanity. My opinion of urbanity is, that it is a quality in which nothing can be found that is disagreeable in the the sentiment, nothing that is coarse in expression, nothing insipid in the taste, and nothing uncouth in the air; and that it is not to be taken from a single expression, but results from the whole of the complexion and manner. Thus, amongst the Greeks, atticism was that agreeable relish, that seasoned politeness, that was peculiar to the Athenians.

To do justice, however, to Marsus, who was a man of the first rank in learning, I must not conceal that he divides the serious manner into three kinds; the honourable, the affrontive, and the middling. An example of the first we have in Cicero's pleading for Ligarius, when he says to Cæsar, You, Sir, who use to forget nothing but injuries. We have an example of the affrontive kind, in one of his letters to Atticus. Alas! says he, I know the man I ought to fly, but not the man I ought to follow. An example of the middle we have in his fourth invective against Catiline, where he says, To the brave, death can never be dishonourable; to the consular, untimely; or to the wise afflicting. All these passages are very noble in their kind; but I cannot see what makes urbanity their characteristic.

But admitting, against my opinion, that urbanity does not result from the whole complexion and manner, and that it may be characterized from single passages, I then take it to be of that kind which partakes of the ridiculous, but is not ridiculous; or that which makes us smile, without making us laugh. Thus it was said of Pollio Asinius, who was equally qualified for the jocose and the serious, that he was a man of all hours. And it was said of a pleader, who spoke off-hand, with great fluency and propriety, that he had all his wit in ready cash. The saying,

ing, too, of Pompey, recorded by Marsus, is of the same kind; for when Cicero was perpetually expressing his fears of Cæsar, says Pompey to him, Go over to Cæsar, and you will fear me. There is here somewhat that would partake of the ridiculous, if it had been spoken upon a less important occasion, with a different view, or by another person than Pompey. We have another instance of the same kind, in a letter from Cicero to Cerelia, in which he apologizes for his so patiently enduring the tyranny of Cæsar. These are things, says he, that call for the spirit of a Cato, or the stomach of a Cicero, to digest them. For there is somewhat jocose in the word stomach.

Such are the remarks I have thought proper to make upon this subject; and though they may not always be pertinent, yet cannot the reader say that I have misled him; for I have laid before him the opinions of others, and left him at liberty to take his choice.

CHAP. IV.

CONCERNING ALTERCATION, OR DISPUTATION.

Its Importance.—The Qualities necessary for it.—Coolness.—Speaking to the purpose without bawling.—The Stratagems of Altercation.—What is to be urged, and what omitted.—Practice required.

It may be thought, I ought not to have handled this subject, till I had finished all I had to say upon that of a continued pleading; for, in point of practice, it comes last. But, as it consists wholly in invention, without admitting of any disposition of parts, and without greatly regarding the embellishments of eloquence, or requiring the strength of memory,

memory, or the beauties of delivery; I thought proper, before I entered upon the second of the five parts I have proposed, to treat of altercation in this place, because it entirely depends upon the first. The reason why some writers have wholly omitted it, seems to have been, that they thought it sufficiently comprehended under the other rules of the art. And, indeed, it does consist in attacking and defending, both which we have fully handled. Whatever is proper to be said, as to the probatory part, in a progressive pleading, is necessary in this more short and concise manner of speaking. For, in fact in disputing, we touch upon the same matters that we have handled in pleading, but in the manner of questioning and answering, which I have already explained in the division I laid down upon the head of evidence.

But, as the plan of this work is very extensive, and as an orator cannot be said to be accomplished without this qualification, I shall bestow some pains upon it, because it has in it some peculiarities, that do not come under the other heads, and which, in some causes, may be even decisive in our favour. For it is true, that were a cause turns upon the general quality of an action, whether it was right or wrong, it requires a continued or progressive discourse, which is generally sufficient to explain the definition and the nature of the fact. We may say the same thing of causes where the fact is incontestable, or where they hinge upon conjectural arguments. But causes very often depend upon proofs that are either entirely void of art, or partly artificial, partly natural; and there the heat of the fight must be maintained by disputation, there we must come to close quarters.

For, in disputation, you are to rivet in the mind of the judge all your strongest arguments; you are there

there to make good all you promised in your pleading; you are there to expose every falsehood advanced by your opponent: In short, there is no part of an orator's business that more fixes the attention of a judge than this does. And, indeed, some very indifferent pleaders, by being excellent disputants, have been entitled to great applause at the bar.

Some advocates, however, contented to discharge the showy task of declaiming, go out of court with the applauses of the audience tingling in their ears, and leave all the business of altercation and disputation to dunces of pleaders, and often to mere pettyfoggers* and by-standers. For this reason in private causes, we find certain advocates employed in the pleading, and others in the probatory parts. Now, if we are to distinguish between those two parts, we must admit the latter to be the most necessary, though, to the shame of our courts be it spoken, the least deserving. As a proof of this, in public trials, the crier bawls out the name of the man who is to manage, as well as of him who is to plead the cause; because it is presumed that the former has talents for disputation, by being endowed with the necessary qualifications of quickness and volubility of imagination, with keenness and presence of mind. For, here, you are not to think, but to speak off-hand; and you are to observe the eye and the wrist of your antagonist, in order to plant, or to parry a thrust. Therefore, though

* Orig. Turba pullata.] Some commentators think, that the pettyfoggers obtained this appellation to distinguish them from orators or advocates, who were cloathed in purple. But the last circumstance is not quite clear. Toga pullata was not, as we generally imagine, a black, but a rusty-coloured robe. And, therefore, others think that this expression in general means the crowds that attend on such occasions. I have given both meanings.

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it is, in general, the business of a pleader to be, not only well, but familiarly, acquainted with the nature of the cause he undertakes; so it is more particularly necessary that he who manages a disputation should be thoroughly master of all circumstances relating to persons, instruments, times, and places. Otherwise we are often reduced to be quite dumb, or to stand like ideots, while others wantonly insult us, from an itch of speaking. And thereby it sometimes happens, that we blush at our own ignorance, and we are forced to submit to fools and dunces.* Some take great pains to teaze a speaker into a passion: for you will see some bawling out in a fit of rage, to inform the judge that he is speaking contrary to his instructions, and that there is in his cause some mischief, which he dares not discover.

A good disputant, therefore, never will be in a passion; for, nothing so much discomposes reason, or disconcerts and bewilders a pleading; as it generally forces us both to offer, and to put up with, gross affronts; nay, sometimes the very judges are provoked by the indecencies that escape us. It is much better for a pleader to be modest, nay, sometimes to suffer a good deal. For you are to answer an opponent, not only by refuting him, but by despising, illuding, and ridiculing what he says. Nor does any part of an orator's business require urbanity, or wit, more than this does. A genteel manner† blunts the edge of spite; but where an antagonist is a mere bawler, we are to attack him

* The original here is extremely depraved, but I believe I have hit upon the meaning of my author, as the same case happens daily in all courts.

† Orig. Odium mordet & pudor.] This is a very extraordinary expression; nor, notwithstanding all the pains that Burmar has taken upon it, can I reconcile it to common sense, but by the manner in which I have translated it.

with spirit, and not suffer ourselves to be borne down by impudence. For there are certain hard-mouthed fellows, who are always roaring out, or interrupting a pleader, or disturbing a whole court. But it is not enough, that we do not imitate such brawlers; for it is our duty to chastise them severely and to dash their presumptuous impudence; and we are to call upon the judges, or the president of the court to maintain the regularity of debate, so as that each may speak in his turn. For that which we commonly mistake for modesty is no better than weakness, and indicates a meanness of spirit, and a softness of skull, despicable beyond expression.

Quickness is one of the chief properties of disputation, and is incommunicable by art. But though nature is not to be informed, yet it may be assisted, by art. In this matter our principal business is always to keep our eye upon our main question and purpose. While we do that, we never can deviate into any indecencies of language or behaviour; nor shall we waste the time, to which the hearing of the cause is confined, in railling. And, should our antagonist do it, we can turn it to our own advantage. We seldom can be taken at a nonplus, if we carefully beforehand consider what we are to speak, what our opponent may urge, and how we are to reply.

It is, however, sometimes an artful conduct to conceal some things in a pleading, and produce them all at once in the proof, by way of a sudden sally, or bursting from an ambuscade. This is most properly done, when we can offer somewhat that our antagonist cannot answer off-hand, but may obviate, if you give him time for recollection. As to those proofs that are solid and will bear examination, it is always our best way to make the most of them at first, and the more they are insisted upon, the better.

It is almost unnecessary to recommend to an orator, never to be turbulent or clamorous in his altercations, which is generally the case with the ignorant. For, though impudence is troublesome to the opposite party, it is, at the same time, hateful to the judge. Add to this, that it hurts a pleader to dispute a matter too long, when he cannot carry it. When we must be worsted, our best course is to submit; because, by fairly yielding up one point, we are the more likely to obtain belief as to others; and though it is the sole point, our candour will soften the censure that is to be inflicted. For to persist in vindicating an offence, especially if we are convicted of it, is an offence of itself. While the victory is doubtful, design and stratagem can do a great deal, by taking advantage of the enemy's oversights, by suffering him to pass as far as he can, nay, sometimes to proclaim his victory.

An orator therefore, is in the right to conceal certain kinds of evidence: for his adversary will thereby be apt to be the more pressing for them, and put the whole of the dispute upon that point, when he thinks he has them not to produce; and, by his calling for them in that importunate manner, he gives them the more weight when they are produced. It may likewise be proper to yield up a point which our adversary may think makes for himself, that while he endeavours to maintain it, he may be forced to give up others that are of greater importance. Sometimes it is of service to make two propositions, and give him his choice of both; and this has a better effect in the altercation, than it has in the pleading, because in the latter we answer ourselves, in the other we convict our adversary, as it were upon his own confession.

An able pleader will carefully observe the expressions that seem most to affect a judge either in his favour

favour or disfavour; and this is most frequently found out in the countenance of the judge, but sometimes by a word, or an action, that escapes him. He is then to repeat whatever he finds is for his purpose, and to steal as softly as possible from whatever he perceives to hurt him. In this he will imitate a good physician, who continues or leaves off to administer medicines, according as the patient retains or loaths them. Sometimes if we find a matter too intricate for us to unravel, we are to introduce another question, and, if possible, to transfer to it the attention of the judge. For when you cannot give a satisfactory answer to a question, what can you do, but find out another question that lays your antagonist under the same difficulty? In most cases as I have already observed, the attention of the judge is to be engaged. This I observed when I treated of evidence, and there is no difference but in the persons; for here the dispute lies between the two pleaders, and there it lay between the pleader and the witness.

Now this is a matter that is easy to be practised; nay, we shall find it of great service to us very often to chuse for our subject somewhat, either real or supposititious, and to dispute it with some person engaged in the same studies, in the same manner as if we were altercating it at the bar. And this may be done in the most simple kind of causes. I would likewise have an advocate to be ignorant in what manner he is to produce his proofs before the judge, in which he is to observe the same order that he did in arguing; that is, to place the strongest in the front and in the rear; for by the first he disposes the judge to believe him, and by the latter to give sentence in his favour.

CHAP.

CHAP. V.

CONCERNING JUDGMENT AND SAGACITY.

HAVING proceeded thus far, to the best of my abilities, I should immediately go on to treat of the disposition of a pleading, which is the next head in order, were I not apprehensive, that some, who think that judgment falls under the head of invention, will imagine I have omitted that subject; which, in my opinion at least, is so interwoven and blended through all the parts of this work, that it is not only inseparable from its sentiments, but from its very words; nor indeed can art communicate it any more than it can communicate either taste or smell. Therefore all I can do upon this head is to point out what an orator ought to practise, and what he ought to avoid, so as to serve to regulate his judgment. The chief rule, after all, is never to attempt impossibilites, and to shun whatever is contradictory or in common to both parties. As to purity and perspicuity, the good sense alone, with which a man is born, can instruct him.

Judgment does not greatly differ from sagacity, only we apply the first to the management of matters that are already evident, and the latter to the discovery of matters that are either obscure, or not found out or doubtful. Now the principles of judgment are very often infallible; but sagacity is deep reasoning, which commonly consists in weighing and comparing circumstances, and implies both invention and judgment at the same time. We are not, however, to imagine that these observations are universally true. For sagacity often determines itself by

by circumstances that occur before we have finished our pleading. Thus, Cicero showed great sagacity in abridging the length of his pleadings against Verres, rather than that the hearing of the cause should be delayed till the year when his opponent Hortensius was to be consul; and in all pleadings at the bar, sagacity is of the greatest utility. It is sagacity that directs us what we are to say, what we are to suppress, and what we are to suspend; whether we are to deny, or to justify an action; whether an introduction, and of what kind, is proper; where a narrative is necessary, and in what manner it is to be conducted; whether we are to plead upon the principles of equity or of law; in what order we are to dispose our pleading; what style we are to use, the severe, the gentle, or even the submissive. But I have already pointed out those matters as they occurred; and I shall continue to do the same as occasion shall require. I shall, however, give a few instances by way of examples, that I may explain my meaning, which I think cannot be done by laying down any rules of art.

The sagacity or conduct of Demosthenes was very noble; for, having persuaded the Athenians to undertake a war, which had succeeded but very indifferently, he shewed them that they had hitherto managed it with no wisdom; and that it was not too late for them to retrieve their oversights; but that if they committed no oversights, they had reason to conceive better hopes in time to come. The same orator, fearing to shock his countrymen if he should directly reproach them for their inactivity and neglect of public liberty, chose to do it by running out in the praises of their ancestors, who supported their government with spirit and wisdom. For thus he readily gained their attention, and it naturally followed that the review of what was glorious in